Exh 22/C

R.C.S. No 58/2026

In the court of Hon'ble C.J.J.D. Vadgaon.

Order - Filed

Sd/-
C.J.J.D.Peth Vadgaon

Sushant Dabade — plaintiff

V/s

Vadgaon municipal council. — Defendant

The list of case laws are as following.

1. 1994 (1) GLR 377
2. 2025 (6) All MR 422
3. 2025 DGLS (SC) 658
4. 1968 AIR 133
5. 2021 DGLS (Bom) 1496
6. 2019 DGLS (Bom) 1650

Here 6 case laws.

Vadgaon
Date 7/05/2026

Adv. P. Patil

Jayeshkumar G. Vyas And Ors. vs Vijay Housing Development And Anr. on 21 December, 1993

Equivalent citations: (1994)1GLR377

JUDGMENT

R.K. Abichandani, J.

1. In all these matters the petitioners have in effect challenged the action of the Municipal Corporation for demolishing unauthorised constructions particularly those made in the space which was required to be kept open for parking vehicles.

2. Special Civil Application No. 5555 of 1993 was originally filed by 55 persons and thereafter, as per Court's order dated 18-6-1993, petitioners Nos. 56 to 77 were added. However, later by order dated 11-6-1993 it was directed by the Court that separate petitions should be filed for petitioners other than the petitioner No. 1. As per the said direction, separate petitions - Special Civil Application Nos. 5711 of 1993 to 5764 of 1993 and Special Civil Application Nos. 6321 of 1993 to 6342 of 1993 were filed. In this group of matters the petitioners have prayed that the respondent No. 2-Municipal Corporation be restrained from demolishing the shops constructed in the cellar, ground-floor and first floor of the building known as Vijay Plaza, situated at Kankaria Road, Opp. Abad Dairy, Ahmedabad. The learned Counsel Mr. A.H. Mehta argued on behalf of the petitioners of this group of matters.

3. Special Civil Application Nos. 6167 of 1993 to 6170 of 1993 also relate to the shops which are proposed to be demolished in the same building Vijay Plaza, in respect of which the petitioners claim rights and Mr. S.S. Belsare, learned Advocate appearing for the petitioners adopted the contentions raised by Mr. A.H. Mehta, supplementing them.

4. Special Civil Application Nos. 5594 of 1993 to 5599 of 1993 have been filed by the persons said to be the owners of certain shops in a building named 'Tulsi', situated in Mithakhali, Navrangpura, Ahmedabad. These petitioners have prayed for restraining the Municipal Corporation from demolishing their property. Mr. D.M. Patel, learned Advocate for Mr. S. I. Nanavati, learned Advocate, appeared in this group of matters.

5. The case of the petitioners in the Vijay Plaza Building group of matters is that the shops in question were sold to them by the respondent No. 1 which is a Partnership firm, for a considerable amount. The respondent No. 1, however, did not inform the petitioners about the fact that the shops were constructed in the area which was shown in he building plan designated as parking space, residential area or nursing home. The cellar in which the shops were constructed and sold to these petitioners was shown as a parking space while the ground floor was shown in the building plan for

shops and residence and the first floor for nursing home. According to the petitioners they have been in possession of the shops since 1989 or immediately thereafter. These petitioners have been carrying on various types of vocations and some of them are Lawyers, Chartered Accountants and Businessmen dealing in transport, chemicals and other trades. According to the petitioners, there was a conspiracy to cheat the citizens between the first and the second respondents, inasmuch as Officers of (he second respondent-Municipal Corporation, have connived at the unauthorised construction and the Corporation had recovered taxes in respect of the shops. It is alleged that there was a deliberate design to induce the people into a belief that the shops could be utilised by them and there was no violation of any bye-laws or regulations in their construction. According to the petitioners about 150 shops came to be purchased in the said complex. It is contended that none of the occupiers were issued any notice under Section 260(1) of the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter referred to as "the Act"). However, on 17th May, 1993, a demolition squad assisted by the Police Force, Fire Brigade etc. came to demolish the shops and a Civil Suit No. 2327 of 1993 was consequently filed by the Vijay Plaza Shops Vishwas Complex Owners' Association, which later came to be withdrawn. The petitioners have contended that they have been doing business in the premises in question and have acquired goodwill. It is contended that the respondent-Corporation having collected taxes in respect of shops and having connived their construction, is estopped from proceeding to demolish the construction on the ground that they were not as per the sanctioned plan. It is also contended that there are several other buildings in which parking space is converted into shops and such commercial complexes are situated on the C.G. Road, which is a residential zone. It has also been contended that though even according to the respondent No. 2-Corporation, it came to know about the illegal construction in July, 1989, no steps were taken for a long time even after issuance of the notice and the decision was taken only on 31st August, 1990 to remove the construction and was in fact served notice on the Society on June 13, 1991. It is contended that petitioners have spent lacs of rupees to purchase the shops in question and they ought not to be demolished by the Corporation. The learned Counsel Mr. Mehta appearing for the petitioners has contended that no notice as contemplated by Section 260(1) of the Act as given to the petitioners who have been in possession of the property from 1989 or immediately thereafter. He referred to the decision of this Court in Municipal Corporation of the City of Ahmedabad v. Sardar Preetam Singh reported in XVIII (1977) GLR 280, in which it was held that the ambit of Section 260(1) was not so wide as to cover transferees after transferees from the original person who constructed the unauthorised structure. It was held that if such a transferee after a long lapse of time was to be called upon to demolish his structure, he could only be called upon after his contentions have been dealt with judicially and his rights have been adjudicated upon. Relying on this decision, he argued that the proper course for the Corporation ought to be to file suits in such cases to get the rights of the occupants judicially determined. He next argued that the respondent-Corporation and its officers were estopped from taking any action under the Act, in view of the fact that they had not taken any action for several years and there was a positive act of accepting Municipal taxes, which amounted to a recognition that everything was in accordance with law. He submitted that even after they found that super-structure violated the building bye-laws, they did not take any action for two years, i.e., till the demolition order came to be served on 13th June, 1991. He submitted that this enabled the builder to sell the shops. He finally contended that while enforcing the policy of demolishing illegal structures, the respondent-Corporation and its officers were acting arbitrarily by pick and choose method and those who were politically powerful

and could share financial benefits, were spared while others were penalised.

6. The learned Counsel Mr. S.S. Belsare appearing in Special Civil Application Nos. 6167 to 6170 of 1993 adopted these contentions of Mr. Mehta and further argued that where construction could be regularised, demolition ought not to be resorted to by the Corporation. He contended that right to take action was waived by reason of the connivance of the officers at work, who allowed the work to be completed and also by virtue of recovery of taxes in respect of shops in question. He submitted that when the work which requires supervision of the Corporation Officers under the law and their periodic inspection was allowed to be completed; it would raise the presumption that things were properly done and therefore, the respondent-Corporation and its officers were estopped from now demolishing the structure. He finally submitted that demolition is a harsh step which ordinarily is to be taken when the structures are dangerous and in cases of change of user, regularisation would be the proper course to adopt.

7. Mr. D.M. Patel, learned Advocate appeared in Special Civil Application Nos. 5594 of 1993 to 5599 of 1993, in which group the petitioners have contended briefly that action was being taken against the shop owners of building known as 'Tulsi' without issuing any notice whatsoever, though they were in possession since 15 months prior to the filing of the petitions. He contended that the rule of 'audi alteram partem' was grossly violated by the respondent-Corporation, inasmuch as no notice whatsoever was given to these petitioners under Sections 260 or 478 of the Act. He argued that the fundamental rights of the petitioners guaranteed by Articles, 19(1)(g)and 21 were therefore, grossly violated. He also contended that respondent-Corporation cannot adopt pick and choose method of demolition of structures.

8. Mr. G.N.Desai, learned Counsel appearing for the respondent -Corporation in all these matters with Mr. P.G. Desai, learned Advocate, contended that chaotic condition would prevail if each among the series of transferees is to be heard. He submitted that persons who were in occupation at the relevant time when the notices were given under Section 260(1) alone would be entitled to be heard and those who subsequently came in picture, were not entitled to any hearing. He submitted that there were several disputed questions of facts involved inasmuch as even the sales were not prima facie established in these petitions and the petitioners have not disclosed by any authentic information as to the dates on which they acquired the shops in question. He submitted that it was even disputed as to when these persons acquired knowledge about the illegality of the constructions as well as about the action which was initiated by the Corporation for demolition of the illegal structures. He submitted that there could not be any question of estoppel on the basis of collection of taxes in respect of the shops in question, for even in case of unauthorised user, taxes would be payable under the law. He submitted that the allegation regarding conspiracy to cheat the citizens was vague and devoid of any substance. He submitted that the Court should not exercise the discretion in favour of these petitioners some of whom had, through their Association, filed a suit which came to be withdrawn. He placed heavy reliance on the decision of the Calcutta High Court in Ramavtar Agarwal v. Corporation of Calcutta and Ors. AIR 1982 Calcutta 314, in which it was held that an occupier not being a person responsible, can have no say against the order of demolition of an unauthorised structure. He submitted that in view of the bye-laws, open space was required to be kept for parking vehicles in these new complexes and there was no question of regularising illegal

constructions by which the open space came to be enclosed and converted into shops.

9. In the Vijay Plaza building group of petitions, it has come on record that on or about 10th July, 1989 it was found by the officers of the Corporation that the Society had carried on construction of 34 shops in the cellar meant for parking space. It was also noticed that the Society had carried out construction of 26 shops in the ground floor and converted the ground floor for a commercial purpose. It was also noticed that 24 shops were constructed on the first floor and 18 shops on 'ottas' and 16 shops in the passage. According to the Corporation, the Society had submitted plans in which parking space was shown in the cellar, shops and residence on the ground floor, nursing home on the first floor and residential flats on second to ninth floors. It appears that Deputy Town Development Officer made an enquiry and prima facie came to the conclusion that the construction was carried out without permission of the Corporation and therefore, notice under Section 260(1) was served on the Society on 16-12-1989, calling upon it to submit its explanation by 23rd December, 1989. It is stated that during inspection it was found that Jagdishbhai, Punjab Transport Company, Vijay Tea Stall and Mangal Pan House were in occupation of the shops unauthorisedly constructed by the Society. Therefore, notice was also given to these persons on 7-12-1989. There was no response to these notices and ultimately a decision was taken on 31st August, 1990 to remove the construction. A notice of the demolition order was served on the Society on 13th June, 1991. It was contended in the affidavit-in-reply that these occupiers had not carried out construction, but were 'mere purchasers' and therefore, were not entitled to notices under Section 260(1) of the Act. The fact that the possession of property was handed over to the petitioners to the knowledge of the officers of the Corporation was denied in the affidavit-in-reply. It was pointed out that no plans were produced for regularisation, despite the fact that status-quo was ordered to continue for six months from 16-3-1992 in the Civil Suit which came to be withdrawn.

10. The relevant provisions of Section 260 of the Act, which call for consideration, reads as under:

> 260. (1) If the erection of any building or the execution of any such work as is described in Section 254 is commenced or carried out contrary to the provisions of the rules or by-laws, the Commissioner, unless he deems it necessary to take proceedings in respect of such building or work under Section 264, shall-
>
> (a) by written notice, require the person who is erecting such building or executing such work or has erected such building or executed such work on or before such day as shall be specified in such notice, by a statement in writing subscribed by him or by an agent duly authorised by him in that behalf and addressed to the Commissioner, to show sufficient cause why such building or work shall not be removed, altered or pulled down, or
>
> (b) shall require the said person on such day and at such time and place as shall be specified in such notice to attend personally or by an agent duly authorised by him in that behalf, and show sufficient cause why such building or work shall not be removed, altered or pulled down.

(2) If such person shall fail to show sufficient cause, to the satisfaction of the Commissioner, why such building or work shall not be removed, altered or pulled down, the Commissioner may remove, alter or pull down the building or work and the expenses thereof shall be paid by the said person.

11. It will be noticed from the above provision that Section 260(1) contemplates notice to be given only to the person who has erected the building or executed such work as is described in Section 254. This Section falls in the group of Sections under sub-head "commencement of work". It follows the provisions requiring notice to the Commissioner accompanied by documents and plans for erecting a new building under Section 253 or for executing work referred to under Section 254 of the Act. Section 260(1) by itself does not deal with the situation where the property has been constructed and has changed hands. It only deals with a situation where the building is erected or the work as referred to under Section 254 of the Act is executed by a person contrary to the provisions of the Rules and By-laws. The expression "to erect a building" is defined in Sub-section (3) of Section 253 of the Act and inter alia includes any conversion into a stall, shop, warehouse or godown, of any building not originally constructed for use as such. It is obvious that ownership of a building would crystalise only on its being constructed and while it is under construction, there would be no question of any occupier of a building. After the building comes into existence, it can be occupied either by the owner or by other occupier. Such occupying will be unauthorised if it is without obtaining a certificate under Section 263 of the Act. It is obvions that the person who has caused the building to be erected by getting it constructed, would be the person erecting such building. Therefore, a notice under Section 260(1) is required to be given even to the owner of the building who would be included within the meaning of the expression "person who is erecting such building".

12. In this context, we may refer to the decision of the Supreme Court in the case of Municipal Corporation, Ahmedabad v. Hiraben Manilal , in which the provisions of Section 260(1)(a) and Section 478 of the Act came to be considered by the Supreme Court. In the case before the Supreme Court, the plaintiff-respondent had purchased the built up house on 26-3-1960. In 1965 there was some construction of walls without the sanction of the Municipal Corporation. On 21st July, 1965 a notice was issued by the Estate Officer of the Corporation under Section 260(1)(a) of the Act, in reply to which it was contended that the impugned construction was not made by the plaintiff, but was in existence when she had purchased the premises. In a suit which was filed for restraining the Corporation from removing the unauthorised construction, it was held by the High Court in a Letters Patent Appeal that notice under the said section could only be issued against a person who had constructed the building or who was constructing the building. The Supreme Court observed that the purpose of these regulations and their object was regulating the building construction in a municipal statute and held that it would have anomalous result if it be said that if a building is constructed illegally or in an unauthorised manner, action can only be taken against the person who is doing the unauthorised act or illegal act but after the construction of the building is passed over to others, the construction of the building enjoys immunity from any action in respect of the same. Reading the provisions of Section 260(1) in conjunction with Section 478 of the Act, it was held that eventhough the expressions in Section 260 are not quite explicit, the action for demolition or removal can be taken by the Corporation or Municipal Authorities exercising power under

provisions of the Act against persons who had not themselves built the infringing portion. It was held that keeping in background the facts of the case and the provisions of Section 478(1), the action taken by the Corporation was warranted by the provisions of the Act and the notice issued under Section 260(1) cannot be said to be unauthorised or illegal. Thus, the decision in Municipal Corporation v. Hiraben Manilal, (supra) would be an authority for the proposition that a notice under Section 260(1) can be validly issued by the Corporation against the transferee owner who has not himself built the infringing portion. Anything said to the contrary in the Municipal Corporation v. Preetam Singh (supra), which decision was considered by the Supreme Court, would therefore no longer be a good law.

13. Section 260(1) is to be read in conjunction with Section 478 of the Act, as held by the Supreme Court. Section 478 of the Act reads as follows:

> 78. (1) If any work or thing requiring the written permission of the Commissioner under any provision of this Act or any rule, regulation or by-law is done by any person without obtaining such written permission or if such written permission is subsequently suspended or revoked for any reason by the Commissioner, such work or thing shall be deemed to be unauthorised and, subject to any other provision of this Act, the Commissioner may at any time, by written notice, require that the same shall be removed, pulled down or undone, as the case may be, by the person so carrying out or doing. If the person carrying out such work or doing such thing is not the owner at the time of such notice then the owner at the time of giving such notice shall be liable for carrying out the requisitions of the Commissioner.

(2) If within the period specified in such written notice the requisitions contained therein are not carried out by the person or owner, as the case may be, the Commissioner may remove or alter such work or undo such thing and the expenses thereof shall be paid by such person or owner, as the case may be.

14. It will be noticed from the above provision that a written notice is to be given to a person carrying out work or doing a thing and if such person is not the owner at the time of such notice, then the owner is liable for carrying out the requisition to remove or pull down the work or to undo the thing. This Section applies where the work or thing is done without written permission of the Commissioner and is, therefore, deemed to be unauthorised. This provision contemplates change of hands and can be invoked against the subsequent owner. The owner is made liable to carry out the requisition. This Section does not specify the persons who are required to be heard when this course is adopted. It would be attracted only where permission required in writing is not obtained before the work or thing is done. It does not speak of show cause notice like Section 260 and a requisition is required to be sent by the Commissioner straightaway. However, this would not mean that while taking action under Section 478, no hearing may be given. The duty to hear would be implied even when action is taken under this provision.

15. Rights in property, personal liberty, status, immunity from penalties or other physical imposition, interests in preserving one's livelihood and reputation and reasonable expectations of

preserving or even acquiring benefits such as licences, would be amongst the interests to which procedural protection in form of hearing may be accorded. Fair procedural standards must be observed where deprivation of a legally recognised interest is consequential. When the direct impact of a discretionary decision is so adverse that a refusal by the Court of the opportunity to be heard would be considered an a front to justice, the right to be heard becomes obvious. An administrative authority which fails to comply with a statutory duty to give prior notice or hold a hearing or make due enquiry or consider objections in the course of exercising discretionary powers effecting individual rights will seldom find the Courts casting an indulgent eye upon its omissions. Public authorities making demolition orders must either give the person concerned notice that they have intended to take this matter into their consideration with a view to coming to a decision or if they have come to a decision that they propose to act upon it and give him an opportunity of showing cause, why such steps should not be taken. In principle, a duty to give prior notice and opportunity to be heard arise when an individual would suffer a direct detriment from the act or a decision. Demolition of a structure entails serious consequences on the rights of the owners and occupiers and may affect livelihood if any vocation is carried out in such place. It would, therefore, be obvious that before making any demolition order, a hearing is required to be given to the persons concerned, viz., the owner and the occupier of the premises in question. From the provisions of Sections 260 and 478 of the Act, no Parliamentary intention can be culled out to exclude the rule of hearing. I, therefore, hold that a transferee of an unauthorisedly constructed premises would be entitled to be heard before a demolition order is passed.

16. If all the persons interested are duly heard and a demolition order comes to be passed in accordance with the statutory provisions in respect of the property, then such property becomes statutorily liable to be demolished. Under Section 8 of the Transfer of Property Act, unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interests which the transferee is then capable of passing in the property and the legal incidence thereof. Therefore, once a property is liable to be demolished under the law after proper procedural steps are taken, on its transfer the same incident would follow and the transferee will take the property subject to its being demolished under the demolition order already made. The effect of the demolition order validly made cannot be frustrated. If such a course is allowed the very purpose underlying the law would become illusive. The Supreme Court in context of unauthorised constructions has, in Pratlma Co-operative Housing Society Ltd. v. State of Maharashtra reported in AIR 1991 SC 1454, held as under:

> We are also of the view that tendency of raising unlawful constructions and unauthorised encroachment is increasing in the entire country and such activities are required to be dealt with by firm hands. Such unlawful constructions are against public interest and hazardous to the safety of occupiers and residents of Multi-storeyed buildings xxx xxx xxx xxx xxx xxx. Before parting with the case we would like to observe that this case should be a pointer to all the builders that making of unauthorised constructions never pays and is against the interest of Society at large. The Rules, Regulations and Bye-laws are made by the Corporations or Development Authorities taking in view the larger public interest of the Society and it is bounden of the citizens to obey and follow such rules which are made for their own

benefits.

17. The transferee who takes the property with the knowledge of a demolition order validly made, would not be entitled to any fresh process of hearing and the proceedings concluded against the transferor would remain binding on him. An order of demolition made under the statute and served on the owner would ordinarily be disclosed to the transferee and the transferee cannot acquire a better right then the transferor. The building liable to be demolished under a demolition order made under a statute would not become not liable to be demolished by virtue of its transfer. Whether such knowledge can be attributed to the transferee would depend on the facts of each case. Proximity of transfer to the demolition order can be relevant factor for attributing the knowledge. However, an order of demolition passed on the file would not be known until served on the person concerned and its knowledge cannot, therefore, be attributed to the transferor or the transferee until it is served. If demolition order is not served and put in cold storage and a long time has elapsed before it is served, the transferee before service of the order would also be entitled to be heard. When the order is not implemented, uncertainty would be created which cannot be allowed to be perpetuated especially when there is no statutory embargo on transfer. In cases where the petitioners have acquired the premises before the service of the demolition order, they ought to be heard on the basis of the cardinal principle of natural justice since they cannot be attributed with the knowledge of the order while accepting the deal.

18. Much reliance was placed on the decision of Calcutta High Court in Ramavtar v. Calcutta Municipal Corporation (supra) for contending that a transferee would in no case be entitled to any notice for showing cause against the demolition proceedings. It was held in that case mat an occupier not being a person responsible, i.e., a person who has something to do with the work of construction or who is in a position to comply with an order of demolition will have no say against the order of demolition of me unauthorised structure. It was held that it cannot be contended that no demolition order can be enforced without giving the occupier an opportunity of being heard. The observations were made in context of provisions of Section 414 of me Calcutta Municipal Act, 1951. It was held that on a proper consideration of the first proviso to Section 414(3) of the Calcutta Act, it seems that after a demolition order is passed and the copies of which are served on the owner and me occupiers for me time being of me unaudiorised structure, me Corporation will be entitled to start the demolition work after the expiry of 30 days from the date of service of me demolition order. No further copy of me demolition order is required to be served by me Corporation on any person who comes to occupy the unaudiorised structure during the period of 30 days or during me period between the service of the copies of demolition order and me execution of work of demolition. In view that this Court is taking as above on the construction of me provisions of Section 260, the said decision of the Calcutta High Court cannot assist the respondent-Corporation.

19. It would appear from the record of these petitions that there have been disputes between the parties about the time when the transferees have acquired the premises, i.e., whether before the service of the demolition order or thereafter. There are no reliable particulars placed on record as to the nature of transactions entered into by me allottees or the transferees. It will be for the Municipal Authority to ascertain true facts to ena-ble itself to proceed in accordance widi law in light of the observations made in mis judgment. In the process the Municipal Corporation may consider

whether it could lawfully regularise the constructions already made, if request for regularisation is made. It may also keep in mind that the action taken or proposed to be taken in all similar cases should be such as it does not give any scope for allegations of discrimination against it.

20. It was pointed out that in Vijay Plaza Building group of petitions, there were no demolition orders for the ground and first floor shops and the demolition order dated 31st August, 1990 was only in respect of the shops which were constructed in the space in the cellar, which was intended for a parking plot Since there is no demolition order in respect of those who are in occupation of the ground floor and first floor, it would be obvious that all the owners and occupiers thereof would be entitled to the procedural safeguard of hearing being given to them before any demolition order is being made.

21. As regards the contention that the respondent-Corporation and it's Officers are estopped from demolishing the structures, it would be sufficient to observe that there cannot be any estoppel against the exercise of statutory powers. Mere collection of taxes in respect of the use of the unauthorised constructions would not estop the Corporation from discharging its statutory functions under the provisions of Sections 260, read with Section 478 of the Act. As held by the Supreme Court in Amrit Banaspati Co. v. State of Punjab , no legal relationship could arise by operation of promissory estoppel which would be contrary both to the Constitution and the law. The promissory estoppel cannot be used for compelling a public authority to carry out a representation or promise which is prohibited by law or which was devoid of any authority or power of the concerned officer or the public authority to make. As held by the Supreme Court in Vasantkumar Radhakishan Vora v. Board of Trustees of the Port of Bombay AIR 1991 SC 14, promissory estoppel should not be extended, though it may be founded on an express or implied promise stamped from the conduct or representation by an office of the State of public authority, when it was obtained to play fraud on the Constitution and the enforcement would defeat or tend to defeat the constitutional goals. Equally so when the conduct amounts to playing fraud on the statutory provisions. Therefore, the allegations that some officers had connived with the unauthorised constructions which would amount to fraud on statutory provisions, cannot create any equity in favour of the petitioners. If the officers have by connivance not taken action for some time, that would not debar the statutory authority from exercising its power.

22. Mere recovery of taxes in respect of unauthorised constructions would neither create any estoppel nor would it amount to waiver and an action can be taken under the provisions of the Act for removing the unauthorised construction even in respect of properties for which taxes are recovered. Proviso to Section 139(2) of the Act clearly envisages recovery of property taxes even in respect of buildings which are unauthorisedly erected. Therefore, the contentions raised on behalf of the petitioners on the basis of recovery of taxes fall to the ground.

22.1 It appears from the record that actions have been initiated against several unauthorised constructions in other buildings. These facts are brought on record in Vijay Plaza Building group of petitions, as also in the Tulsi Building group of petitions. If the owners have succeeded in thwarting the process of demolition by litigating against the Corporation, fault cannot be found with the Corporation. The record discloses that the Corporation has been making efforts to see that the

structures which are unauthorisedly constructed are dealt with in accordance with law and there does not appear to be any pick and choose method adopted by the Corporation as alleged on behalf of the petitioners. There is no sufficient material to come to a conclusion that the Corporation has meted out discriminatory treatment against a particular party or has acted with an ulterior motive against them. Therefore, the contentions raised on behalf of the petitioners on the ground that the Corporation has arbitrarily acted by adopting pick and choose method cannot be accepted.

23. Under the above circumstances, the respondent-Municipal Corporation is directed in these matters to ascertain true facts to enable itself to proceed in accordance with law and in light of the observations made in is judgment. This process it may complete within 4 months from today and until then, there should be no demolition made of the properties in question. In the process the Municipal Corporation may consider whether it could lawfully regularise the construction already made if request for regularisation is made by the concerned petitioners. The Corporation may also keep in mind that the action taken or proposed to be taken in all similar cases should be such as it does not give scope for allegations of discrimination against it. Rule made absolute accordingly in all these matters with no order as to costs.

2025 INSC 610

REPORTABLE

IN THE SUPREME COURT OF INDIA
EXTRAORDINARY APPELLATE JURISDICTION

Petition for Special Leave to Appeal (C) Nos.12199-12200/2025

KANIZ AHMED **Petitioner(s)**

VERSUS

SABUDDIN & ORS. **Respondent(s)**

O R D E R

1. Heard the learned Senior counsel appearing for the petitioner.

2. The High Court in Paras 21 and 22 of its impugned judgment and order has observed thus:-

> *"21. Therefore, the police authorities are directed to give notice to all the occupants to vacate the premises by themselves by April 30, 2025. If any of them still continued to remain in occupation, they shall be evicted by deployment of adequate police force and such process shall be completed by not later than May 16, 2025. After the three floors are vacated, the KMC authority shall initiate demolition proceedings for which also the police authorities shall deploy adequate police force and such demolition shall be completed and a report be filed before this Court supported by photographs on June 19, 2025. During the process of vacating the occupants of the building as well as during the process of demolition, the entire events shall be videographed and such cost shall be borne by KMC.*

> *22. Needless to state that this writ petition being a public interest litigation, it goes without saying that not only the construction, which has been put up by the private respondents is to be dealt with, but the KMC authority should also cause inspection of all the*

> ***neighbouring properties and if any violation is found, the above directions will apply mutatis mutandis to such constructions as well. Of course, action be taken after issuing notice to the owners/occupants of those properties".***

3. We are in complete agreement with what has been observed by the High Court in the above referred paragraphs.

4. We admire the courage and conviction with which the High Court has proceeded to take care of unauthorised construction in exercise of its jurisdiction in public interest.

5. In one of our recent pronouncements, in the case of *Rajendra Kumar Barjatya and Another v. U.P. Avas Evam Vikas Parishad and Others* reported in 2024 INSC 990, we have made ourselves very explicitly clear that each and every construction must be made scrupulously following and strictly adhering to the rules and regulations. In the event of any violation, being brought to the notice of the courts, the same should be dealt with iron hands and any leniency or mercy shown to the person guilty of unauthorised construction would amount to showing misplaced sympathy. In our decision referred to above, we have issued the following directions:

> ***"(i) While issuing the building planning permission, an undertaking be obtained from the builder/applicant, as the case may be, to the effect that possession of the building will be entrusted and/or handed over to the owners/beneficiaries only after obtaining completion/occupation certificate from the authorities concerned.***
>
> ***(ii) The builder/developer/owner shall cause to be displayed at the construction site, a copy of the approved plan during the entire period of construction and the authorities concerned shall inspect the premises periodically and maintain a record of such inspection in their official records.***
>
> ***(iii) Upon conducting personal inspection and being satisfied that the building is constructed in accordance with the building planning permission given and there is no deviation in such construction in any manner, the completion/occupation certificate in respect of residential / commercial building, be issued by the authority concerned to the parties concerned, without causing undue delay. If any deviation is noticed, action must be taken in accordance with the Act and the process of issuance of completion/occupation certificate should be deferred, unless and until the deviations pointed out are completely rectified.***

(iv) All the necessary service connections, such as, Electricity, water supply, sewerage connection, etc., shall be given by the service provider / Board to the buildings only after the production of the completion/occupation certificate.

(v) Even after issuance of completion certificate, deviation / violation if any contrary to the planning permission brought to the notice of the authority immediate steps be taken by the said authority concerned, in accordance with law, against the builder / owner / occupant; and the official, who is responsible for issuance of wrongful completion /occupation certificate shall be proceeded departmentally forthwith.

(vi) No permission /licence to conduct any business/trade must be given by any authorities including local bodies of States/Union Territories in any unauthorized building irrespective of it being residential or commercial building.

(vii) The development must be in conformity with the zonal plan and usage. Any modification to such zonal plan and usage must be taken by strictly following the rules in place and in consideration of the larger public interest and the impact on the environment.

(viii) Whenever any request is made by the respective authority under the planning department/local body for co-operation from another department to take action against any unauthorized construction, the latter shall render immediate assistance and co-operation and any delay or dereliction would be viewed seriously. The States/UT must also take disciplinary action against the erring officials once it is brought to their knowledge.

(ix) In the event of any application / appeal / revision being filed by the owner or builder against the non-issuance of completion certificate or for regularisation of unauthorised construction or rectification of deviation etc., the same shall be disposed of by the authority concerned, including the pending appeals / revisions, as expeditiously as possible, in any event not later than 90 days as statutorily provided.

(x) If the authorities strictly adhere to the earlier directions issued by this court and those being passed today, they would have deterrent effect and the quantum of litigation before the Tribunal / Courts relating to house / building constructions would come down drastically. Hence, necessary instructions should be issued by all the State/UT Governments in the form of Circular to all concerned with a warning that all directions must be scrupulously followed and failure to do so will be viewed seriously, with departmental action being initiated against the erring officials as per law.

> ***(xi) Banks / financial institutions shall sanction loan against any building as a security only after verifying the completion/occupation certificate issued to a building on production of the same by the parties concerned.***
>
> ***(xii) The violation of any of the directions would lead to initiation of contempt proceedings in addition to the prosecution under the respective laws."***

6. The learned counsel appearing for the petitioner would submit that her client be given one chance to pray for regularisation of the unauthorised construction. We do not find any merit in such submission. A person who has no regards for the law cannot be permitted to pray for regularisation after putting up unauthorised construction of two floors. This has something to do with the rule of law. Unauthorised construction has to be demolished. There is no way out. Judicial discretion would be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. We are at pains to observe that the aforesaid aspect has not been kept in mind by many State Governments while enacting Regularisation of Unauthorized Development Act based on payment of impact fees.

7. Thus, the Courts must adopt a strict approach while dealing with cases of illegal construction and should not readily engage themselves in judicial regularisation of buildings erected without requisite permissions of the competent authority. The need for maintaining such a firm stance emanates not only from inviolable duty cast upon the Courts to uphold the rule of law, rather such judicial restraint gains more force in order to facilitate the well-being of all concerned. The law ought not to come to rescue of those who flout its rigours as allowing the same might result in flourishing the culture of impunity. Put otherwise, if the law were to protect the ones who endeavour to disregard it, the same would lead to undermine the deterrent effect of laws, which is the cornerstone of a just and orderly society.[See: Ashok Malhotra v. Municipal Corporation of Delhi, W.P. (c) No. 10233 of 2024 (Delhi High Court)]

8. The Special Leave Petitions stand dismissed.

9. Pending applications, if any, shall also stand disposed of.

10. Registry is directed to circulate one copy each of this order to all the High Courts.

……..……J.
(J.B. PARDIWALA)

…….J.
(R. MAHADEVAN)

NEW DELHI.
30th APRIL 2025.

2025 DGLS(Bom.) 3050
(BOMBAY HIGH COURT)

Equivalent Citations :- 2025 (6)All.M.R. 422 :

Before :-K.R. Khata :J

Bharat Keshavji Chheda
Versus
Maharashtra Housing and Area Development Authority (MHADA)

Case No. : Writ Petition No.1107 of 2025
Date of Decision : 17-10-2025

Acts Referred :

Constitution of India,Art.226

Advocates Appeared :

Mr. Aditya P. Shirke i/by Adv. Shivraj Patne, Advocates For the Appellant
Mr. Akshay Shinde Advocates For the Respondents

Judgment

1. The Petitioner challenges the ex-parte order dated 7th January 2025 passed by Respondent No.4 directing him and/or his assignee to vacate the subject premises within 48 hours, failing which the premises namely, Building No.5, Shop No.2, Panchratna Co- operative Housing Society, Nehru Nagar, Kurla (E), Mumbai- 400 024 would be sealed by the Maharashtra Housing and Area Development Authority (“MHADA”). The grievance is that the order was passed without notice or hearing, allegedly offending principles of natural justice and entailing adverse civil consequences.

2. Mr. Shinde, learned Advocate for MHADA, seeks vacating of the ad-interim relief granted on 8th January 2025, submitting that the building in which the Petitioner commenced commercial use lacks an Occupation Certificate (“OC”). He points out that Respondent No.1 thereafter passed an order dated 7th October 2025 directing immediate vacation. He also submits that

the ad-interim order of 8th January 2025 was obtained without effective notice to the Respondents.

3. Mr. Shirke, learned Advocate for the Petitioner, submits that the Petitioner executed a lease dated 23rd February 2024 with Jammu & Kashmir Bank ("the Bank") in respect of the premises. He contends that the impugned order of 7th January 2025 was passed behind the Petitioner's back, and seeks six months' time to vacate, citing public inconvenience if the Bank branch is closed abruptly.

4. Having heard both sides and perused the record, the following conclusions emerge.

5. The sole ground urged in the Petition is breach of natural justice for want of notice prior to the order dated 7th January 2025. On a pointed query as to how the Petitioner inducted a Bank under a commercial lease into a premises admittedly lacking an OC, there was no satisfactory answer. The Petitioner attributes possession to the developer, Parsn Construction and Developers Pvt. Ltd., but that does not absolve him of the basic obligation to ensure lawful occupation. A person engaged in business cannot feign ignorance of the fundamental requirement of an OC for occupation and commercial use.

6. Matters are aggravated by the fact that a public-facing Bank branch was commenced in such premises. The Bank's 'responsible' officers owed a duty of diligence to verify statutory compliances, including OC and fire NOC, prior to opening the branch. Having failed to do so, the Petitioner or the Bank cannot invoke natural justice to prolong an unlawful occupation or claim indulgence on the footing of "public inconvenience" of its own making. The impugned order is of 7 January 2025; the Petition was filed on 8 January 2025; yet for nine months thereafter no meaningful steps were taken to vacate. Instead, the ad-interim order was used as a shield to continue a non- compliant occupation.

7. This is not a case of enforcing an oral or concluded contract; nor does the Petition raise any challenge to the underlying statutory regime requiring an OC. On these facts, the plea of breach of natural justice is untenable. Even assuming some procedural lapse, no relief in Writ would be warranted where the substantive and continuing illegality is incontrovertible and poses public-safety risks.

8. A litigant who approaches the Court must do so with clean hands. The Petitioner occupied and commercially exploited premises without an OC and then used the Court's ad-interim protection to perpetuate that illegality for months. No equitable relief is merited.

9. In the circumstances, no case is made out to continue the interim protection or to grant further time. The Petition deserves dismissal with exemplary costs, and consequential directions are warranted to fix administrative responsibility.

: ORDER :

I. The Writ Petition is dismissed with costs of Rs.50,00,000/- to be paid by the Petitioner to the PM Cares Fund within a period of two weeks from the date of uploading of this Judgment on the website of Bombay High Court.

II. The account details of the said Fund are as under :

Name of the Account : PM CARES Account Number : 60355358964

IFSC : MAHB0001160

Branch : UPSC - New Delhi

III. The ad-interim order dated 8th January 2025 stands vacated forthwith.

IV. The concerned authorities shall immediately enforce the order dated 7th January 2025, and the subsequent direction dated 7th October 2025, in accordance with law.

V. The Chairman/Chief of the Jammu & Kashmir Bank, MHADA shall, within six weeks, initiate an inquiry to:

a) identify the officers of Jammu & Kashmir Bank responsible for commencing and operating the branch in premises lacking an OC and fire NOC;

b) examine lapses, if any, by public officials or private entities that enabled such occupation from 23rd February 2024; and

c) take action as permissible in law, including initiation of appropriate proceedings and imposition of penalties.

VI. Registry is directed to communicate this Judgment to the Municipal Commissioner BMC, CEO MHADA and Chairman/Chief of the Jammu & Kashmir Bank by digital mode and private service.

VII. A brief compliance affidavit be filed by all concerned before this Court within eight weeks.

VIII. It is clarified that nothing in this order precludes the authorities from taking any independent statutory action, including sealing, prosecution, or recovery of charges, as may be warranted.

10. At this stage, the learned Advocate for Petitioner seeks stay of the Judgment. In view of the reasons stated above, the stay is rejected.

Pyare Lal Etc vs New Delhi Municipal Committee & Anr on 20 April, 1967

Equivalent citations: 1968 AIR 133, 1967 SCR (3) 747, AIR 1968 SUPREME COURT 133

Author: G.K. Mitter

Bench: G.K. Mitter, K.N. Wanchoo, Vishishtha Bhargava

PETITIONER:
PYARE LAL ETC.

Vs.

RESPONDENT:
NEW DELHI MUNICIPAL COMMITTEE & ANR.

DATE OF JUDGMENT:
20/04/1967

BENCH:
MITTER, G.K.
BENCH:
MITTER, G.K.
WANCHOO, K.N. (CJ)
BHARGAVA, VISHISHTHA

CITATION:
1968 AIR 133 1967 SCR (3) 747
CITATOR INFO :
RF 1975 SC2178 (9)
1989 SC1988 (2,9,17)

ACT:
Punjab Municipal Act 1911 (3 of 1911), ss. 173, 188-Power to regulate sale of edibles on public streets-Street vendors whether have fundamental right to carry on their trade-Food Adulteration Act, 1954 and Rules made thereunder-Their effect on powers tander s. 173 of Municipal Act.

HEADNOTE:
The petitioners were vendors of potato chops and other edibles which they sold on public streets. The New Delhi Municipal Committee issued them licences for some time and later on tried to give them alternative sites for carrying

on their trade. Finally however on 30th April 1965 it passed a resolution banning the sale of cooked edibles on public streets. The vendors filed a petition for writ in the High Court which failed. With special leave they appealed to this Court.

It was urged on behalf of the appellants that : (i) in the absence of bye-laws framed under s. 188 of the Punjab Municipal Act the Municipal Committee had no power under s. 173 of the Act to prohibit their trade; (ii) After the passing of the Prevention of Food Adulteration Act, 1954 the powers under s. 173 could not be used to regulate the sale of food from the purity aspect; (iii) the power of the Municipality under s. 173 was only to regulate the trade but it could not be used to contravene the fundamental right of the petitioners to carry on their business.

HELD : (i) The powers of the Municipality under s. 173 to allow encroachments on public streets and to permit sale of food or stalls to be set up was meant for special occasions like festivals, etc. Section 188 was not designed for the purpose of. framing bye-laws to regulate the conditions on which persons like the petitioners, could be allowed to carry on trade on public streets and thus create permanent unhygienic conditions. This should never have been permitted by the Municipality.[753 M]

(ii) The object of the Food Adulteration Act was that food which the public would buy was prepared packed and stored under sanitary conditions so as not to be injurious to the health of the people consuming it. The rules made thereunder would override rules or bye-laws made by a municipality only if they covered the same field. Under s. 173(1) of the Punjab Municipal Act, however, it was open to the Municipal Committee to take steps to prevent sale of any cooked food however pure if the sale thereof on public streets would offer obstruction to passersby or create insanitary conditions. [755 D-F]

(iii) Out of sympathy for the street hawkers and squatters the N.D.M.C. had permitted the continuance of the trade for a long time. But no objection could be taken to their exercise of power under s. 173 of the Punjab Municipal Act to eradicate the evil. The power was confined merely to preventing obstruction to traffic. Every person has a right to pass and repass along a public street. But he cannot be heard to say that he ha,;; a fundamental right to carry on street trading and particularly in a manner which is bound to create insanitary and unhygiene conditions in the neighbourhood. [758 A-B]

7 48

Roberts v. Hopwood, [1925] A.C. 578, Pyx Granite Co. v. Ministry ,of Housing, [1958] 1 All E.R. 625, C. S. S. Motor Service v. Madras State A.I.R. 19053 Mad. 279 and Westminister Corporation v. London and North Western Railway [1905] A.C. 426, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 4865492 of 1967.

Appeals by special leave from the orders dated August.4, 1966 of the Punjab High Court, Circuit Bench at Delhi in Letters Patent Appeals Nos ' 84-D, 70-D, 72-D, 73-D, 71-D, 55-D and 79-D of 1966 respectively.

Madan Bhatia and D. Goburdhun, for the appellants (in all the appeals).

Bishan Narain and Sardar Bahadur, for respondent No. 1 (in C. As. Nos. 486-488 of 1967) and the respondent (in C.A. No. 489 of 1967).

Sardar Bahadur, for respondent No. 1 (in C. As. Nos. 490492 of 1967).

R. N. Sachthey, for respondent No. 2 (in C. As. Nos. 486- 488 and 490 to 492 of 1967).

The Judgment of the Court was delivered by Mitter, J. These are seven appeals, by special leave, from a a judgment and order of the Punjab High Court in a Letters Patent Appeal from a judgment and order of a single Judge dated April 7, 1966.

The facts in all these appeals bear a close resemblance and these cases were dealt with by a common judgment of the High Court. The facts in Appeal No. 486 of 1967 i.e. Pyare Lal's case, as laid in his petition, may be stated by way of specimen. By his petition dated October 12, 1965 Pyare Lal moved the Punjab High Court for the issue of a writ or direction restraining the New Delhi Municipal Committee from interfering with his right to carry on his trade at the site referred to in paragraph 1 of his petition, or, at any rate, without allotting an alternative site to him. He was a seller of potato chops and squatted at a site beside the service lane at the back of a shop off Janpath, New Delhi. There were other squatters who occupied sites in the same service lane. Although in the petition it was claimed that the site was not part of a public street, this was not pressed before the High Court and we will proceed on the basis that as a matter of fact, be was squatting on a public street. He claimed to have. been carrying on his trade at the same site from before 1950. He became a member of an association of squatters within the area of New Delhi Municipal Committee known as the New Delhi Rehri Owners Association formed for the purpose of pressing the demands of its members for grant of licences and other facilities by the said Municipal Committee. Reference is made in the petition to assurances said to have been given by the President and Vice-President of the Municipal Committee to the association in 1956 for giving the members of the association certain protection on conditions. it is said that the Vice-President of the Municipal Committee gave an assurance that if the squatters formed themselves into a co-operative society for preparation of edibles and built trolleys of specified designs and agreed to carry on their trade at places allotted, licences would be issued to them. In response to this, a co-operative society was. formed and the Health Officer of the Municipal Committee informed the association of the sites which had been approved by the Municipal Committee for the purpose. Before the licences could be issued, the office bearers of the

Municipal Committee were changed and the new incumbents sought to go back upon the assurances given by their predecessors. After a long spell of contest and uncertainty the then President of the Municipal Committee made a press announcement in May 1963 that all squatters and stall-holders within the area of the New Delhi Municipal Committee who had been squatting or holding stalls since 1957 would be granted licences for the same. This was followed by a. survey of all squatters and a list of them including the petitioner was prepared. On December 20, 1963, the New Delhi Municipal Committee passed a resolution for the grant of licences to these squatters. The relevant portion of the same is as follows :-

> "1. Temporary tehbazari permits would be issued to verified squatters/hawkers.
>
> 2. The hawkers/squatters would be required to sit at the site as might be specifically allotted by the committee and during such hours as might be prescribed.
>
> 3. The tehbazari fee would be charged from such squatters at the rates given in the scheme prepared by the SVP (senior Vice- President) dated 22-7-1962.
>
> 4. The squatters should be required to pay three months' tehbazari fee in advance before the issue of the temporary tehbazari permit.
>
> 5.
>
> 6. The conditions of the tehbazari permit as mentioned above were approved subject to the condition
>
> (a) Condition No. 7 be deleted.
>
> (b) The word licencee' shall be substituted by "hawkers/squatters".

(c) The last condition would be as suggested by the L.A. in his note dated 20-12-1963.

7. The selection and allotment of sites would be done by a sub-committee consisting of P.M.C., S.V.P. and J.V.P."

The petitioner was granted a licence to run his potato chops trade at a monthly fee of Rs. 25 and he was allotted a specific site mentioned earlier. Sometime in July 1964 the respondent Committee sought to impose a condition to the effect that all hawkers/squatters should remove their stalls every day after sunset and re-establish them after sunrise. Various stall-holders challenged the aforesaid condition as unreasonable by way of writ petitions and civil suits. Thereupon, the Committee stopped accepting licence fee from these squatters/hawkers. Ultimately most of them withdrew their cases pending in court on assurance being given that they would not be disturbed in their trade. Thereafter, the New Delhi Municipal Committee called upon the squatters/hawkers to submit declarations that they had paid the tehbazari fee up to 30-6-1965 and that they had been allotted alternative accommodation by the respondent in lieu of the sites previously occupied. In return the

Committee assured them that it would accept tehbazari fee from them and allow the occupation by them of the former sites held by them until allotment of alternative accommodation. It is stated that the petitioner submitted the desired declaration and the New Delhi Municipal Committee accepted the sum of Rs. 225 as licence fee up to 30-6-1965. In the matter of allotment of alternative sites however, the respondent practised discrimination and did not allot any site to the petitioner although it granted such facility to others. Further, the employees of the N.D.M.C. from time to time threatened the petitioner with removal of all his articles etc. with which he carried on his trade from the site occupied by him. The petitioner submitted that the N.D.M.C. was preventing him from carrying on his trade as a seller of potato chops unreasonably and in gross abuse of its power. It was submitted further that it was not open to the respondent to act arbitrarily and interfere with the petitioner's trade until the resolution, granting the licence was annulled by a subsequent resolution. It was also submitted that the N.D.M.C. had no power under s. 173 of the Punjab Municipal Act to withdraw permission. for encroachment on a public street unless reasonable prior notice was given. The :grounds formulated in the petition were inter alia as follows

1. The N.D.M.C. has no power to take away the fundamental right of the petitioner to carry on his trade. It could only regulate the common law right of the petitioner to sell his wares on a public street under s. 173 of the Punjab Municipal Act only so far as it was necessary in the interest of the safety or convenience of the public.

2. That no resolution having been passed annulling the grant of licence to the petitioner, the action of the N.D.M.C. was illegal and without jurisdiction.

3. The action of the N.D.M.C. in preventing the petitioner from carrying on his trade without allotting an alternative site was discriminatory and unconstitutional.

In the counter affidavit by the Secretary to the New Delhi Municipal Committee (hereinafter referred to as the N.D.M.C.) it was stated that the petitioner had no fundamental right of the kind mentioned in the petition and his right, if any, to early on his business was subject to such reasonable restrictions as the N.D.M.C. might think tit to impose under the provisions of the Punjab Municipal Act. The restrictions actually imposed upon the squatters/hawkers were reasonable and within the ambit of the powers of the N.D.M.C. The petitioner had been granted a temporary tehbazari permit under the temporary tehbazari permit scheme and according to condition No. 2 of the permit the N.D.M.C. reserved to itself the right to cancel the same without assigning any reason whatsoever. The permit did not confer any right in property to the petitioner and his right to carry on business had been banned to his knowledge by resolution No. 36 dated 30th April, 1965 passed by the N.D.M.C. The petitioner was carrying on ;the business in violation of the resolution of the committee. On the merits of the case, it was stated that the N.D.M.C. had considered a scheme prepared by the senior Vice President regarding re- organisation of procedure about the issue of licences to, hawkers, squatters, etc. and by a resolution of 29th June 1962 it was resolved that in future a sub-committee would go into the matter of determining the persons or category of persons who would be given licences. After prolonged discussions and consideration, the resolution was passed on 20th December 1963. By this the terms and conditions of a permit to be granted to hawkers/squatters were decided upon a pro-forma of a temporary permit was also settled and on

the reverse thereof the conditions regarding the grant of permit were incorporated. Due to violation of the provisions of the Punjab Municipal Act by the squatters and because of certain practical difficulties, the committee resolved on 13th March 1964 that temporary permits would be issued to verified hawkers for the day-time only and that the sites occupied must be left clear during the night. A sub-committee consisting of several municipal officers went round to various places in New Delhi to inspect the sites already selected 7 52 for allotment to hawkers/squatters. They were unable to select any further new sites and made a report to the President of the Committee. As many as 264 squatters out of 725 were allotted the sites approved. The progress of the allotment of approved sites was not appreciable as many of the squatters did not find the new sites to their choice. The Committee by its resolution dated 17th July 1964 decided that temporary tehbazari permit fees should be deposited by the verified squatters who had not been allotted sites till then on condition that "site to be fixed" was to be mentioned in the permits of such squatters. 483 squatters deposited requisite charges upto the period ending 30th September 1964. It was noticed however that the squatters were not complying with the conditions of the temporary tehbazari permit scheme. In order to enforce these conditions, day and light raids were conducted and tarpaulin sheds of various squatters were removed as also goods of those who stayed on the sites at night. Ultimately, by reason of non-compliance of the conditions of the temporary permit scheme by hawkers, the scheme itself was suspended with effect from 1-9-1964. The sale of cooked articles of food gave rise to such insanitary conditions that a resolution was passed by the committee on the 30th April 1965 banning the sale of cooked food including, tea, kulcha, choley, dahi bara, etc. It was submitted in the counter affidavit that the petitioner as a holder of a temporary tehbazari permit had no right or interest in the land belonging to the N.D.M.C. and that his right was subject to permission by the N.D.M.C. to carry on his trade. The petitioner had submitted a declaration to the effect that he had ceased to squat in the N.D.M.C area. He never made an application for allotment of a platform at Ramakrishnapuram (a facility granted to many) but applied for change of trade from potato chops dealer to that of a general merchant. He was informed on 2nd December 1964 about the cancellation of the temporary tehbazari permit granted under S. 173 of the Punjab Municipal Act. He had never been granted any licence. He along with the other squatters were carrying on a business which tended to create slums on some of the important roads in New Delhi and as such the temporary tehbazari permit scheme had to be suspended and permission for sale of cooked food was withdrawn.

The contentions of the petitioner were turned down by the learned single Judge and his appeal in common with that of a number of appeals of other squatters and hawkers to the Division Bench met with the same fate. The first contention pressed before us in this appeal was that it was not open to the Municipal Committee to stop the petitioner and others from carrying on their trade by a resolution under S. 173 of the Punjab Municipal Act. The relevant portion of the section runs as follows "(1) The Committee may grant permission in writing, on such conditions as it may deem fit for the safety or convenience of persons passing by, or dwelling or working in the neighbourhood, and may charge fees for such permission, and may at its discretion withdraw the permission, to any person to-

(a) place in front of any building any movable encroachment upon the ground level of any public street or over or on any sewer, drain or watercourse or any movable overhanging structure

projecting into such public street at a point above the said ground level.

(b)

(c) deposit or cause to be deposited building materials, goods for sale, or other articles on any public street, or

(d)

(e) erect or set up any fence, post, stall or scaffolding in any public street.

It was argued that s. 173 only made general provisions but it was open to the N.D.M.C. to frame bye-laws under s. 188 and in the absence of such bye-laws a resolution under s. 173(1) could not be passed so as to affect the petitioner's rights. S. 188 provides that a committee may, and shall if so required by the State Government frame. bye-laws. The nature of the bye-laws is specified in cls. (a) to

(v) of s. 188 and cl. (u) reads :

> " regulate the conditions on which and the periods for which permission may be given under sub-section (1) of section 172 and sub- section (1) of section 173, and provide for the levy of fees and rents for such per- mission;"

It was urged that so long as bye-laws are not framed under the above clause, the conditions on which and the periods for which permission could be given under s. 173 (1) could not be altered. In our opinion the bye-laws under s. 188(u) had to be made for an altogether different purpose. Ss. 172 and 173 are generally aimed at preventing any encroachments

-over public streets which cause obstruction thereon. The expression "goods for sale" in cl. (c) of s. 173(1) or "stall" in cl. (e) of s. 173(1) have to be read in that connection. The placing of goods for sale or erecting stalls in public street may be allowed by the municipality on stated occasions as in the case of some festivals etc. Again it may be necessary to seek the permission of the municipality to make .holes or excavation on any street or remove materials from beneath any street or to take up or alter the payment or deposit building materials thereon for the purpose of erecting a new building or making an alteration to an existing one and the power to regulate the conditions for grant of permission and the fees to be paid in connection therewith by bye-laws under s. 188 has that object in view. S. 188 was not designed for the purpose of framing bye-laws to regulate the conditions on which persons like the petitioner could be allowed to carry on trade on public streets and thus create permanent unhygienic conditions thereon. This should never have been permitted by the municipality and the fact that it has by resolution tinder S. 173 purported to stop that practice cannot go against it. It was then urged that s. 173 in so far as it purported to give the municipality power to prevent the sale of cooked food was repealed by the provisions of the Prevention of Food Adulteration Act, 1954 and the Rules framed thereunder. Our attention was drawn to ss. 23, 24 and 25 of the Prevention of Food Adulteration Act. S. 23(1) of this Act gives the Central Government

power to make rules subject to certain conditions. Under sub cl. (a) such rules may specify articles of food or classes of food for the import of which a licence is required prescribe the form and ,conditions of such licence., the authority empowered to issue the same and the fees payable thereunder. Under cl.

(c) such rules may lay down special provisions for imposing rigorous control over the production, distribution and sale of any article or class of articles of food which the Central Government may, by notification in :the Official Gazette, specify in this behalf including registration of the premises where they are manufactured, maintenance of the premises in a sanitary condition and maintenance ,of the healthy state of human beings associated with the production. distribution and sale of such article or class of articles. Under cl. (g) such rules may also define the conditions of sale or conditions for licence of sale of any article of food in the interest of public health. S. 24(1) empowers the State Government. subject to certain conditions, to make rules for the purpose of giving effect to the provisions of this Act in matters not falling within the purview of S. 23. S. 25 (1) provides that "If, immediately before the commencement of this Act, there is in force in any State to which this Act extends any law corresponding to this Act, that corresponding law shall upon such commencement stand repealed."

Rules have been framed under this Act known as Prevention of Food Adulteration Rules, 1955. R. 50(1) of the rules provides that no person shall manufacture, sell, stock, distribute or exhibit for sale any of the articles of food specified therein except under a licence. Such articles include "sweetmeats and savourly". Our attention was also drawn to sub-rr. (5), (10) and (11) 'of r. 50Under sub-r (5) the licensing authority must inspect the premises and satisfy itself that it is free from sanitary defects before granting a licence for the manufacture, storage or exhibition of any of the articles of food in respect of which a licence is required Under sub-r. (10) no person can manufacture, store or expose for sale or permit the sale of any article of food in any premises not effectively separated from any privy, urinal, sullage, drain or place of storage of foul and waste matter to the satisfaction of the licensing authority, and under sub-r. (1 1) all vessel s used to r the storage or manufacture of the articles intended for sale must have proper covers to avoid contamination. It was argued on the strength of the above that these rules covered the field of sale of cooked food at stalls on public streets and therefore the provisions of s. 173(1) of the Punjab Municipal Act which might otherwise have empowered the municipality to proceed thereunder stood repealed on the promulgation of these rules. This argument is fallacious. The object of s. 23(1) and the different sub-rules. under r. 50 was entirely different from that behind s. 173(1) of the Punjab Municipal Act. The object of the Food Adulteration Act, as its preamble shows, was to make provision for the prevention of adulteration of food and adulteration in this connection had a special significance under s. 2 of the Act. The object of this Act was to ensure that food which the public could buy was inter alia prepared, packed and stored under sanitary conditions so as not to be injurious to the health of the people consuming it. The rules framed thereunder would only over-ride rules or bye laws, if any, made by any municipality if they covered the same field. Under s. 173(1) of the Punjab Municipal Act it is open to a municipal committee to take steps to prevent sale of any cooked food however pure if the sale thereof on public streets would offer obstruction to passersby or create insanitary condition.,, because waste matter was bound to be thrown on the street an washing up of articles used in the trade introduce unhygienic conditions in the neighbourhood and create nuisance. We cannot accept

the contention that s. 173(1) had only the object of ensuring the free passage of persons and traffic along the public street and so long as there was no such obstruction powers under s. 173 could not be utilised for any oblique purpose like preventing per- son,, from carrying on a lawful trade.

It was further argued that s. 56(1) (g) of the Punjab Muni- cipal Act showed that "all public streets, not being land owned by Government and the pavements, stones and other materials thereof and also trees growing on, and erections, materials, implements and things provided for such streets"

> vested in and were under the
>
> -control of the committee. According to the learned counsel this ,only empowered the committee to regulate trade on public streets and not altogether prevent the same. Our attention was drawn to Halsbury's Laws of England, Vol.
>
> -33 (Third Edition), article 998 at page 586 headed "regulation of street trading". The learned author thus summarised the law in England:-
>
> "Subject to certain exceptions it is unlawful for any person to engage in street trading in or from a stationary position in any street within a metropolitan borough, or to engage in street trading in any designated street whether or not in or from a stationary position, unless he is authorised to do so by a street trading licence.....
>
> Nothing in the foregoing provisions (1) restricts the right of any person to carry on the business of a pedlar or hawker in accordance with a pedlar's certificate or hawker's licence which he holds; or (2) applies to the sale or exposure or offer for sale of newspapers or periodicals by any person who does not use in connection with the sale, etc., any receptacle which occupies a stationary position in a street, other than a receptacle which is exclusively used in connection with the sale etc. . . . "

It would appear that street trading is regulated by certain statute,, in England and we have nothing of the kind here. On the basis of the above passage, it cannot be said that persons in India have a lawful right to pursue street trading and such trading may be regulated but not altogether prevented. On the authority of Roberts v. Hopwood(1) it was argued by learned counsel that s. 173 at best gave a discretion to the Committee to regulate street trading and therefore the same has to be exercised reasonably and could not altogether be prevented. Reference was also made to Pyx Granite Co. v. Ministry of Housing(2) where it was held that the planning authority under the Town and Country Planning Act, 1947, was not at liberty to use their powers for art ulterior object, however desirable that object may seem to them to be in the public interest. In our view, hone of these decisions have any bearing on the question before us. There was no ulterior object behind the resolution of the N.D.M.C. in this case. Clearly the presence of the stall- holders on public streets and sale of cooked food was against public hygiene and S. 173(1) could be availed of to stop the same. Learned counsel also cited the case of C. S. S. Motor Service v. Madras State(1). There it was argued that the (1) [1925] A.C. 578. (2) [1958] 1 All E. R. 625. (3) A.I.R. 1953 Madras 279.

7 5 7 petitioners had a right to carry on motor transport business and that this was a right guaranteed under Art. 1 9 (1) (g) of the Constitution. It was held that the regulation of motor traffic must be determined with the object of serving the interests of the public. Further it was held that a system of licensing which had for its object the regulation of trade was not repugnant to Art. 19(1) (g). We do not think that the observations in that case are of any assistance to the appellants before us.

As a branch of the above argument it was also contended that the resolution under s. 173 on which the municipal committee relied in this case gave uncontrolled power to the committee to do what they pleased.

It was argued that under the guise of regulation the committee sought to take away the right of the petitioner and others to carry on their trade at their sweet will. Reliance was placed in this connection on a judgment of the House of Lords in Westminster Corporation v. London and North Western Railway(1). There it was observed that a public body invested with statutory powers must take care not to exceed or abuse them and that it must act in good faith and reasonably. We do no," think that these obser- vations help the appellants because it has not been shown to its that there was any bad faith which prompted the N.D.M.C. to pass the resolution complained of, nor did they act unreasonably.

It was argued however that the counter affidavit of the res- pondent as regards the allocation of alternative sites was not correct and comment had been made thereon by the learned single Judge of the High Court. However that may be, it is apparent from the judgment that not all the, squatters applied for alternative accommodation and not all of them approved of the sites which were allotted to them. It was beyond the jurisdiction of the N.D.M.C. to provide persons like the appellants with sites at Ramakrishnapuram. That was under the jurisdiction of the Director of Estates and it appears that this authority had been approached for helping persons like the appellants. Further, no question of discrimination can arise because all the hawkers/ squatters did not apply for such sites or could not be provided with such sites. The resolution of 30th April 1965 clearly show- ed that the N.D.M.C. was out to stop the sale of cooked food including tea, kulche choley etc., inasmuch as the sale of cooked food presented an exceptionally difficult problem because facilities like running water, sewer connection etc. necessary for the minimum standard of sanitation could not be made available.

It appears to us that this series of litigation was the result of the N.D.M.C. allowing trade of a kind on public streets which it (1) [1905] A. C. 426.

should have never allowed. Out of sympathy for them the N.D.M.C. had permitted the continuance of the trade for a Ion,-, time. But no exception can be taken to their exercise of power under s. 173 of the Punjab Municipal Act to eradicate the evil. After all every person has a right to pass and re-pass along a public street. He cannot be heard to say that he has a fundamental right to carry on street trading and particularly in a manner which is bound to create insanitary and unhygienic conditions in the neighbourhood.

The appeals therefore fail, and are dismissed. G.C. Appeals dismissed.

2021 DGLS(Bom.) 1496
(BOMBAY HIGH COURT)

Equivalent Citations :- 2021 (5) AIR Bom R 257 : 2022 (2) All.M.R. 204 :

Before :- Prithviraj K. Chavan :J

Shantilal Chhogalalji Doshi and Others
Versus
Municipal Corporation of Greater Mumbai

Date of Decision : 18-02-2021

Acts Referred :

Code of Civil Procedure,O.43 R.1(r)
Insolvency and Bankruptcy Code,S.62
Maharashtra Housing and Area Development Act,S.100
Maharashtra Housing and Area Development Act,S.101
Maharashtra Housing and Area Development Act,S.102
Maharashtra Regional and Town Planning Act,S.156
Maharashtra Regional and Town Planning Act,S.44
Maharashtra Regional and Town Planning Act,S.45(5)
Maharashtra Regional and Town Planning Act,S.53
Mumbai Municipal Corporation Act,S.351
Mumbai Municipal Corporation Act,S.351(1)
Mumbai Municipal Corporation Act,S.44
Mumbai Municipal Corporation Act,S.475(A)

HEADNOTE

Headline: Unauthorized structure would tantamount to perpetuating illegality, which might cause danger to lives of adjacent dwellers hence, tenants are not entitled to any relief.

Mumbai Municipal Corporation Act, 1888, S.351 - Maharashtra Regional and Town Planning Act, 1966, Ss.44, 45(5), 156 - Unauthorized construction - Form No.1 provided

for making application for development permission under Section 44 of M.R.T.P. Act - It contemplates that there should be signature of owner of land - Appellants are not owners of land over which notice structure has been erected - As such, again balance of convenience does not tilt in their favour - Notice issued by Corporation to produce approval or permission from competent authority - Tenants producing annexed map with Memo of Appeal prepared by M.H.A.D.A. which simply depicts that notice structure is 'L' shaped with no other specific measurements - Said map does not show that notice structure was authorized - Thus, neither there is any sanctioned plan nor any due authorization or any assertion and, therefore, there is no question of balance of convenience in favour of appellants - Held, unauthorized structure would tantamount to perpetuating illegality, which might cause danger to lives of adjacent dwellers. Conduct of appellants is not free from blame - No sympathy can be shown to unauthorized structure as by showing same, would tantamount to perpetuating illegality, which may cause danger to lives of adjacent dwellers. Tenants are not entitled to any relief. Appeal dismissed. (Para 30 32 34 35)

Result: Against the Appellant.

# # #

Cases Referred :

1. Municipal Corporation of Greater Mumbai (MCGM) Vs. Abhilash Lal and Others;2019 DGLS(SC) 1488 : 2020 (1) Bom.C.R. 320 : 2019 (16) Scale 507 : 2020 (1) BC 342 : 2020 (1) CTC 555 :
2. Kasinka Trading Vs. Union of India;1995 AIR(SC) 874 : 1994 DGLS(SC) 956 : 1994 (7) JT 362 : 1994 (4) Scale 806 : 1995 (1) SCC 274 :
3. Darshan Oils Private Limited: Bombay Soap Factory: Vee Kay Oils Private Limited Vs. Union of India;1995 AIR(SC) 370 : 1995 (2) Bom.C.R. 709 : 1994 DGLS(SC) 1007 : 1995 (1) JT 219 : 1994 (4) Scale 840 : 1995 (1) SCC 345 :
4. Shrijee Sales Corporation Vs. Union of India;1996 DGLS(SC) 2150 : 1996 (11) JT 648 : 1997 (1) Scale 117 : 1997 (3) SCC 398 : 1997 (1) Supreme 352 :
5. Shree Sidhbali Steels Ltd.and Others Vs. State of U.P.and Others;2011 AIR(SC) 1175 : 2011 AIR(SCW) 4292 : 2011 DGLS(SC) 62 : 2011 (1) Scale 676 : 2011 (3) SCC 193 :
6. Pappu Sweets and Biscuits Vs. Commissioner of Trade Tax, U.P., Lucknow;1998 AIR(SC) 3247 : 1998 AIR(SCW) 3170 : 1998 DGLS(SC) 976 : 1998 (7) JT 9 : 1998 (5) Scale 469 : 1998 (7) SCC 228 : 1998 (7) Supreme 566 :
7. Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar and Company and

Others;2018 DGLS(SC) 712 : 2018 (7) JT 319 : 2018 AIR(SC) 3606 : 2018 AIR(SCW) 3606 : 2018 (9) SCC 1 : 2018 (9) Scale 251 : 2018 (5) AIR Bom R 802 : 2018 (7) Bom.C.R. 334 :
8. Seema Arshad Zaheer and Others Vs. Municipal Corporation of Greater Mumbai and Others;2006 DGLS(SC) 394 : 2006 (11) JT 1 : 2006 (5) Scale 263 : 2006 (5) SCC 282 : 2006 (5) Supreme 33 : 2006 (4) Bom.C.R. 46 : 2006 (5) Mh.L.J. 218 : 2006 (3) All.M.R. 159 : 2006 (108) Bom.L.R. 1731 : 2006 (5) ALT(SC) 26 :
9. M.I.Builders Private Limited Vs. Radhey Shyam Sahu;1999 DGLS(SC) 737 : 1999 (5) Scale 155 : 1999 (6) SCC 464 : 1999 (3) Supreme 273 :

Advocates Appeared :

Narendra V. Walawalkar, Senior Counsel, Uday Warunjikar, Bharat Joshi and Madhuri More, for the Petitioner.
Mayur Khandeparkar instructed by Sanket Mungale, for the Respondent.

JUDGMENT :

Per Prithviraj K. Chavan, J. :-

1. This appeal under Order 43, Rule 1(r) of the Civil Procedure Code arises from an order dismissing a Notice of Motion No. 1289 of 2020 in L.C. Suit No. 1087 of 2020 by the City Civil Judge on 24 December, 2020.

2. Facts, necessary for disposal of the appeal can be stated hereinbelow:-

3. The appellants are the joint tenants with one Hitesh Shantilal Doshi in respect of two adjacent premises bearing No. 202 and 204B in a corrugated sheets roof, C.I. shed of “L” shape admeasuring 39 (13 meters x 3 meters) sq.meters and 30.4 (8 meters x 3.80, metes) sq. meters in both limbs on iron pillars and walls of the building and compound wall on both sides situated at 170/A, 176, Jethwa Villa, 3 Kumbharwada Lane (old North Brooks Street), Dr. Mahimtura Marg, Mumbai-400 004 (hereinafter referred to as “notice structure”).

4. The respondent No. 1 - M.C.G.M. issued a Notice to the appellants bearing No. C/DOC/220/351/C76N01 dated 21 July, 2020 under Section 351 of me Mumbai Municipal Corporation Act (for short “MMC Act”). By the said notice, the appellants were intimated that they had erected an unauthorised notice structure adjoining to Jethwa Building, known as “Shanti Metal Supply Company” admeasuring 24 x 4 x 2.6 meters approximately, by way of using Brick Masonry Wall and slopping patra shed at 204BI, Ground Floor, Plot No. 176, J.N.

Jethwa Building. The appellants were asked to furnish approval or permission from the competent authority and also to produce relevant documentary evidence in support of the notice structure.

5. Mr. Bharat Joshi, on behalf of the appellants had furnished certain documents in support of the notice structure by stating that it is an authorised and approved structure. The documentary evidence produced by the appellants and the remarks thereof by the respondents in the speaking order dated 9 December, 2020, read thus:-

(See table on next page)

6. Having gone through the reply furnished by the appellants, respondent No. 2 concluded that the documentary evidence supplied by the appellants is not authentic and not satisfactory, in the sense, there is no due approval or permission from the competent authority namely; Executive Engineer (Building Proposal) City - III of MCGM qua the notice structure.

7. Consequently, the respondents by a speaking order dated 9 December, 2020 directed the appellants to remove/demolish/pull down the notice structure within 15 days from the receipt of the order. It was, inter alia, informed that if the appellants fail to remove/demolish the notice structure, that will be removed at their own risk and cost. The appellants were inter alia intimated that they are liable to be prosecuted under Section 475-A of the M.M.C. Act.

8. At the outset, if the pleadings are perused, there is no specific averment in the plaint that the notice structure has been erected with a sanctioned plan issued by the competent authority or there has been due authorisation by the respondents qua notice structure. In his elaborate argument, the learned Counsel for the appellants has emphasized several aspects, which in fact, do not find place in the plaint. Thus, sans pleadings, those submissions are hardly of any relevance.

9. A brief reference to the pleadings would clear the picture as to what has been contended by the appellants.

10. The appellants are carrying their business from the notice structure under the name and style as “Shanti Metal Supply Company”, which was erstwhile known as “Padmavati Steel and Engineering Company”. The appellants are the tenants qua the notice structure since 8 August, 1990. One Mr. J.N. Jethwa was the landlord. One Ramji Prajapati was the tenant in respect of the notice structure before the appellants were inducted as tenants.

11. The respondent No. 1 had earlier issued a notice on 8 March, 1978 to said Ramji Prajapati under Section 351 of the M.M.C. Act. Pursuant to that notice, the earlier tenant Ramji Prajapati had filed a Suit No. 656 of 1979 challenging notice dated 8 March, 1978 under Section 351 of the M.M.C. Act. A plea was taken that the notice structure was in existence prior to 1962. Ad-interim injunction was granted in respect of demolition by the City Civil Court.

On 14 September, 1979, the Deputy Law Officer of the respondent No. 1 - M.C.G.M. made a statement before the City Civil Court that the notice structure was regularized by the Municipal Commissioner under Memo No. WOC/24311/SEVI dated 6 September, 1979. Based on the said statement by the Deputy Law Officer, the suit was withdrawn by the then tenant Ramji Prajapati.

12. It is contended that the regularization order was challenged before the Lok Aayukta by a politician. However, Lok Aayukta upheld the notice structure as legal. Even a question was raised in the Legislative Assembly by the then MLA Mrs. Jaywantiben Mehta, which was replied by drawing attention to the decision of the Lok Aayukta.

13. The appellants further averred that the Assessment Department of respondent No. 1 in its capital value calculation has assessed the notice structure as shops. A statement in tabular form indicating such assessment has been annexed along with the plaint.

14. It is contended that the appellants had applied to the respondent under Right to Information Act on 7 July, 2020 seeking copy of the memo of regularization being Memo No. WOC/24311/SEVI dated 6 September, 1979. However, the respondent - M.C.G.M. has not yet answered or replied the said application seeking information under the Right to Information Act.

15. On these material averments, the appellants sought ad-interim relief which came to be refused by the City Civil Judge in his reasoned order dated 24 December, 2020.

16. Mr. Warunjikar, the learned Counsel appearing for the appellants reiterated the contention in the plaint as well as in the Memo of Appeal by assailing the impugned notice dated 21 July, 2020 under Section 351 of the M.M.C. Act by stating it untenable. The impugned notice dated 21 July, 2020 under Section 351 of the M.M.C. Act directs the owner/occupier/landlord as well as the appellants to submit sufficient cause to the satisfaction of the competent authority to justify the unauthorised construction/notice structure on plot No. 176, J.N. Jethwa building. The notice gives schedule of the unauthorised structure, which reads thus:-

“Unauthorised construction of L shaped shop (as shown in sketch) known as Shanti Metal

Supply Corporation adjoining of Jethwa building having admeasuring total size 24m. x 5m. x 2.6m. approx by the way of using Brick Mesonary wall and slopping patra shed at 204B, floor gr. Plot-176, JN Jethwa building, D.R. Mitrasen Mahimtura Marg, Durgadeviudyan, 3rd Kumbarwada, Mumbai - 400 004 without taken prior permission from competent authority i.e. M.C.G.M."

17. The learned Counsel for the appellants drew my attention to the Roznama of the L.C. Suit No. 656 of 1979 filed by the erstwhile tenant Ramji Prajapati wherein a statement was made that the dispute arising in the suit was regularized in view of Memo No. WOC/24311/SEVI dated 6 September, 1979. In that view of the matter, the suit was withdrawn.

18. It is contended by Mr. Warunjikar that since the respondent - M.C.G.M. has not clarified in respect of the said memo of regularization, the notice structure itself shows that the appellants have strong prima facie case.

19. The learned Counsel has also drawn by attention to Sections 100, 101 and 102 of the M.H.A.D.A. Act. According to Mr. Warunjikar, the notice structure was taken up for repairs by the Mumbai Building Repairs and Reconstruction Board (for short 'MBRR Board')- A repair plan was submitted to the respondents by the MBRR Board. By virtue of a statutory provision, permission is deemed to have been obtained by the MBRR Board if the Board gives a notice of the proposed repair work to the M.C.G.M. before commencement of the work. It is submitted that despite receipt of such notice from the Board, no permission within 30 days of receipt of notice has been given. The appellants contend that the notice structure was repaired by the MBRR Board in the year 2014. The sanction repair plan of MBRR Board of M.H.A.D.A. reflects the notice structure. Since, the respondents had not raised any objection before the State Government in respect of the repair plan of the notice structure, the MBRR Board had sanctioned the repair plan. Thus, it is deemed to be an authorised sanction structure.

20. Conversely, Mr. Walawalkar, the learned Senior Counsel, representing the respondents drew my attention to page 91 of the compilation depicting photographs in respect of the notice structure. It is contended that it is a "L" shape structure unauthorisedly erected in an open space which is required to be kept compulsorily open between two buildings. Mr. Walawalkar, submits that in an earlier suit, the erstwhile tenant contended that there are two notice structure whereas now the stand has been changed, wherein the present appellants contend that it is a one "L" shape structure. Mr. Walawalkar further drew my attention to the fact that there are no averments in respect of MHADA plan as well as no reference to the provisions of the M.H.A.D.A. Act. There is no pleading in respect of Section 100 and arguments advanced by the learned Counsel for the appellants, which are hollow and it cannot be heard. The learned

Senior Counsel further stressed that MHADA plan does not offer regularization of the structure as per Sections 100 and 101 of the M.H.A.D.A. Act. My attention is drawn by the learned Senior Counsel to Sections 44, 45(5) and 156 of the Maharashtra Regional and Town Planning Act, 1966 (for short "M.R.T.P. Act"). He also drew my attention to Section 351(I)(a)(b) of the M.M.C. Act by contending that the notice structure is a clear encroachment between two buildings, which is nothing but a serious threat to the lives of the persons in the vicinity, as according to the learned Counsel, in case of a fire hazard, there is every possibility of risking human life and destruction of the property. He also drew my attention to the Maharashtra Development Rules 1970 by contending that the pro forma in Form-I is to be sent by the owner and not by the tenant/licensee.

21. Mr. Khandeparkar, learned Counsel for the intervenor concluded his submissions by contending a single sentence that plea of appellants is mutually destructive, in the sense, if the notice structure has been in existence prior to 1962 then, there was no need to apply for its regularization.

22. There is no specific, clear and positive assertion of a sanction plan qua the notice structure in the plaint, which is sine qua non for a suit of this nature. If there are no pleadings, no amount of evidence can be looked into in that regard. The learned Senior Counsel, Mr. Walawalkar, has therefore, pressed into service the observations made by this Court in a Public Interest Litigation No. 67 of 2017 in case of Tushara Guru Salien v. State of Maharashtra and Ors. What has been observed by a Division Bench of this Court in paragraph Nos. 4 and 5 can be reproduced for advantage, which read thus:-

"4. Since the learned Judge who has granted the ad-interim protective order has yet to decide the application seeking interim injunction, for the benefit of the learned Judge and for the benefit of all Judges in the State of Maharashtra before whom such kinds of suits are instituted, we would like to clarify the legal position.

5. Concerning a property, a suit to enforce or protect an interest in the property which is governed by a Municipal Statute, the interest protected has to be with respect to a plea that prima facie, the structure which is being targeted is an authorised structure. Meaning thereby, the plaint must make an averment that the structure targeted is prima-facie governed by the sanction. Merely pointing out deficiencies in the notice or the authority of the person issuing the notice is neither here nor there. Thus, the since qua non of such kinds of suits is a positive assertion made with reference to the sanctioned building plans."

23. Thereafter, a single Judge of this Court by an order dated 18 September, 2019 passed in

Appeal from Order (St.) No. 25660 of 2019 (Mohammed Imran Gulam Mohd. Gujarati and Anr. v. The Municipal Corporation of Greater Mumbai), while dismissing the Appeal from Order and imposing cost of Rs. 50,000/- upon the appellants, has reiterated the order passed by the Division Bench in case of Tushar Guru Salien (supra). The same observations have further been echoed in Notice of Motion No. 495 of 2019 in P.I.L. No. 67 of 2017 (Coram : S.C. Dharmadhikari and G.S. Patel, JJ.).

24. As regards statement made by the Deputy Law Officer of MCGM in L.C. Suit No. 656 of 1979 on 14 September, 1979, it cannot be said to be the last and final word binding the MCGM. In that respect, Mr. Walawalkar, the learned Senior Counsel has rightly placed a useful reliance on a judgment of the Hon'ble Supreme Court in case of MCGM v. Abhilash Lal and Ors. 2019, DGLS (SC) 1488 : AIR-Online 2019 SC 1570. It was an appeal by MCGM under Section 62 of the Insolvency and Bankruptcy Code, 2016 against the judgment of the National Company Law Appellate Tribunal (NCLT), rejecting its plea with respect to a resolution plan approved by the NCLT under the provisions of that Code. The relevant part of the judgment reflects in paragraph 48, which reads thus:-

"48. The last contention of the respondents, that MCGM was bound by the statement made by its counsel, in the opinion of this court, cannot prevail. As held earlier, there is no approval for the plan, in accordance with law; in such circumstances, the written plea accepting the plan, by a counsel or other representative who is not demonstrated to possess the power to bind MCGM, is inconclusive. In this regard, the court notices the well-known principle that there can be no estoppel against the express provisions of law. (Ref. Kasinka Trading v. Union of India 1995 (1) SCC 274 : (AIR 1995 SC 874), Darshan Oils (P.) Ltd. v. Union of India, 1995 (1) SCC 345 : (AIR 1995 SC 370), Shri jee Sales Corporation v. Union of India, 1997 (3) SCC 398 : (AIR Online 1996 SC 470), Shree Sidhbali Steel Ltd. v. State of U.P., 2011 (3) SCC 193 : (AIR 2011 SC 1175), Pappu Sweets and Biscuits v. Commr. of Trade Tax, U.P., 1998 (7) SCC 228 : (AIR 1998 SC 3247) and Commr. Of Customs v. Dilip Kumar and Co., 2018 (9) SCC 1 : (AIR 2018 SC 3606)." (Emphasis supplied)

25. What has been carved out from the said paragraph is that there cannot be estoppel against the express provisions of law. Even if it is presumed for a moment that any such statement made by the Deputy Law Officer is made in a previous suit, that itself would not bind the MCGM. Be that as it may.

26. It, therefore, cannot be presumed that the notice structure has been duly regularized. Consequently, balance of convenience does not tilt in favour of the appellants.

27. It is the contention of the appellants that the sanction repair plan was sent by MBRR Board (MHADA) in the year 2010 to the respondents under Section 101 of the MHADA Act, which is a deemed sanction. The notice structure was repaired in 2014. The respondent did not file any objection to the repair plans and, therefore, it is deemed to be an authorised structure. At the first flush, this argument may appear to be attractive, however, a close scrutiny would demonstrate that MHADA plan does not ipso facto confers regularization of an unauthorised structure. In that context, Section 156 of the M.R.T.P. Act makes the legal position clear, which reads as under:-

Section 156:-

“Notwithstanding anything contained in any law for the time being in force-

(a) 1[* * * * * * * * * * * * * * * *]

(b) when permission for such development has not been obtained under this Act, such development shall not be deemed to be lawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has been obtained.

[Provided that, the development which has been duly permitted or deemed to have been permitted by the concerned Village Panchayat within the area of the gaothan or the gunthewari development which has been regularized in accordance with the provisions of the Maharashtra Gunthewari Developments (Regulation, Upgradation and Control) Act, 2001, shall not be treated as unauthorised development under this Act]”

28. In case of any conflict between the rules and regulations as framed under the provisions of the M.R.T.P. Act or the Development Regulation and Scheme Regulations in one hand and the building bye-laws framed by the provisions of Bombay Provincial Municipal Corporation Act, 1949, it is quite clear that regulations made under the MRTP Act would prevail. Undisputedly, on 8 March, 1978 a similar notice under Section 351 of the M.M.C. Act was issued to Mr. J.N. Jethwa by the respondents in respect of the notice structure for its removal, being unauthorised. It is apparent that a space, which should have been compulsorily kept open, had been encroached upon by the appellants.

29. Mr. Walawalkar, the learned Senior Counsel has drawn my attention to Rule 6 and 10 of the Maharashtra Development Plans Rules, 1970, which read thus:-

“6. Application for permission for development - (1) Subject to the provisions of this rule, every application under Section 44 for permission to carry out any development on any land shall be made in Form 1.

(2) The following particulars and documents shall be submitted along with the application, namely:-

(a) A site-plan (in quadruplicate) of the area proposed to be developed to a scale to a scale of not less than 1/600.

(b) A detailed plan (in quadruplicate) showing the plan sanctions and elevation of the proposed development work to a scale of not less than 1/100 as may be available.

(c) In the case of a layout of land or plot-

(i) a plan (in quadruplicate) drawn to a scale of not smaller than 1/15000 showing the surrounding land and existing access to the land included in the layout.

(ii) a plan (in quadruplicate) drawn to a scale of not less than 1/600 showing-

(x) sub-divisions of the land or plot with dimensions and area of each of the proposed sub-division and its use according to prescribed regulation;

(y) width of the proposed streets; and (z) dimensions and areas of open spaces provided in the layout for the purposes of garden or recreation or like purpose.

(d) an extract of the record of rights or property register card or any other document showing the ownership of land proposed to be developed.

(3) Plans referred to in sub-rule (2) above shall be prepared by a licensed surveyor.

(4) The Planning Authority may also call from the applicant in writing any further information that may be required for the purpose of considering any application.

10. Permission to retain development of land carried out without proper authority - Any person aggrieved by the notice served by the Planning Authority under sub-section (1) of Section 53 and desiring to apply for permission under Section 44 shall write to the Planning Authority giving full details of the development carried out on the land, explaining the reasons for

carrying out such development unauthorisedly and applying for permission for retention on the land of any building or works or for the continuance of any use of the land, to which the notice relates. Such person shall also submit to the Planning Authority the relevant particulars and documents that would have been required to be submitted under sub-rule (2) of Rule 6, had he applied for permission under Section 44 before the development was carried out."

30. Form No. 1 provided for making an application for development permission under Section 44 of the M.R.T.P. Act. It contemplates that there should be a signature of the owner of the land. The appellants are admittedly not the owners of the land over which the notice structure has been erected. As such, again the balance of convenience does not tilt in their favour.

31. The M.C.G.M. had issued a breach Notice dated 10 June, 2020 in respect of the suit structure directing the intervenor/landlord/owner of plot No. 6, upon whose land the notice structure is erected, to submit documentary evidence proving the authenticity/approval of the commercial shop (Shanti Metal Supply Corporation) standing in a compulsory open space i.e. notice structure. After taking measurements of the unauthorised construction on the site, no permission was shown by the occupier of the said structure in respect of the said erection. The photographs of the notice structures are annexed at page 91 to the appeal memo.

32. The appellants have annexed a map with the Memo of Appeal prepared by M.H.A.D.A. which simply depicts that the notice structure is "L" shaped with no other specific measurements. It only depicts a sketch of ground and first floor. This map does not take the appellants case any where so as to show the notice structure authorised. Thus, neither there is any sanctioned plan nor any due authorisation or any assertion and, therefore, there is no question of balance of convenience in favour of the appellants. The learned Counsel for the appellants has not pointed out as to how the judicial discretion has not been properly exercised by the learned Judge while refusing equitable relief.

33. Mr. Walawalkar, learned Senior Counsellor the respondents has placed reliance upon a decision of the Hon'ble Supreme Court in the case of Seema Arshad Zaheer and Ors. v. MCGM and Ors., 2006 (5) SCC 282 : (AIR Online 2006 SC 159). The appellants in the said case, had approached the Hon'ble Supreme Court wherein there were certain allegedly unauthorised structures put up in plots belonging to CPWD, Government of India. The said land was allegedly leased to one M in the year 1939. M, who was carrying on business on that land, assigned his business to a company in the year 1947. The said company let out several portions thereof to different subtenants. In 2000, the said company, by a deed of assignment, assigned all its right, title and interest and claim in the said property to one G with the stipulation that it would be for G to obtain the rights of the assignor in the said property. G

obtained possession of various portions of the said land from the respective sub-tenants, made improvements/partitions in the existing old structure and then let out the same to different sub-tenants (the petitioner before the Supreme Court) in the year 2001-2002. In 2003, the respondent Corporation issued notices to the petitioners under Section 351 of the Bombay Municipal Corporation Act stating that the structure had been unauthorisedly constructed and calling upon them to show cause against the proposed removal or pulling down thereof. In that context, it is held by the Hon'ble Supreme Court in paragraphs 30, 31, 32 and 33, which read thus:-

"30. The discretion of the court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff: (i) existence of a prima facie case as pleaded, necessitating protection of the plaintiff's rights by issue of a temporary injunction; (ii) when the need for protection of plaintiff's rights is compared with or weighed against the need for protection of defendant's rights or likely infringement of defendant's rights, the balance of convenience tilting in favour of plaintiff; and (iii) clear possibility of irreparable injury being caused to plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the court with clean hands.

31. It is true that in cases relating to orders for demolition of buildings, irreparable loss may occur if the structure is demolished even before trial, and an opportunity to establish by evidence that the structure was authorised and not illegal. In such cases, where prima facie case is made out, the balance of convenience automatically tilts in favour of plaintiff and a temporary injunction will be issued to preserve status quo. But where the plaintiffs do not make out a prima facie case for grant of an injunction and the documents produced clearly show that the structures are unauthorised, the court may not grant a temporary injunction merely on the ground of sympathy or hardship. To grant a temporary injunction, where the structure is clearly unauthorised and the final order passed by the Commissioner (of the Corporation) after considering the entire material directing demolition, is not shown to suffer from any infirmity, would be to encourage and perpetuate an illegality. We may refer to the following observations of this Court in M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu, 1999 (6) SCC 464 : AIR 1999 SC 2468, made in a different context: (SCC p. 529, para 73).

"This Court in numerous decisions has held that no consideration should be shown to the builder or any other person where construction is unauthorised. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if

it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is requires to be exercised has to be in accordance with law and set legal principles."

32. Where the lower court acts arbitrarily, capriciously or perversely in the exercise of its discretion, the appellate court will interfere. Exercise of discretion by granting a temporary injunction when there is 'no material', or refusing to grant a temporary injunction by ignoring the relevant documents produced, are instances of action which are termed as arbitrary, capricious or perverse. When we refer to acting on 'no material' (similar to 'no evidence'), we refer not only to cases where there are total dearth of material, but also to cases where there is no relevant material or where the material, taken as a whole, is not reasonably capable of supporting the exercise of discretion. In this case, there was 'no material' to make out a prima facie case and therefore, the High Court in its appellate jurisdiction, was justified in interfering in the matter and vacating the temporary injunction granted by the trial court.

33. We find no reason to interfere with the order of the High Court in the seven appeals. We accordingly dismiss these SLPs. as having no merit. The petitioners are granted 15 days time to make alternative arrangements. Parties to bear their respective costs."

34. This ratio squarely applies to the present set of facts. Thus, neither there is a prima facie case nor balance of convenience is in favour of the appellants. There is no question of irreparable loss, which cannot be compensated in terms of money.

35. To conclude, it is difficult to say that the conduct of the appellants is free from blame in the light of the discussion made hereinabove. No sympathy can be shown to an unauthorised structure as by showing the same, would tantamount to perpetuating illegality, which may cause danger to the lives of adjacent dwellers. There is accordingly, no merit in the appeal.

36. The Appeal from Order is dismissed with costs.

37. In view of the disposal of the appeal, interim applications do not survive and the same are disposed of.

38. After pronouncement of the judgment, the learned Counsel for the appellants seeks continuation of the status-quo order granted by this Court on 8th January, 2021 in order to

facilitate them to approach the Hon'ble Supreme Court.

39. Mr. Walawalkar, learned Senior Counsel for the respondents - M.C.G.M, however, strongly opposed continuation of the status-quo order granted by this Court on 8th January, 2021 by contending that a compulsory open space has been occupied by the notice structure and, therefore, in case of a fire, there is no access to reach the spot and, therefore, ad-interim relief granted earlier should not be continued.

40. Having considered the respective submissions, in the interest of justice, order passed by this Court on 8th January, 2021 to maintain status-quo shall stand extended for a period of three weeks. It is made clear that there shall be no further extension.

41. The parties to act upon an authenticated copy of this order.

Appeal dismissed.

2019 DGLS(Bom.) 1650
(BOMBAY HIGH COURT)

Equivalent Citations :-2020 (2) Mh.L.J. 156 :

Before :- S.C. Dharmadhikari : G.S. Patel : JJ

Savitribai Phule Shikshan Prasarak Mandal, Kamalapur
Versus
Solapur Municipal Corporations and Another

Case No. :Writ Petition No.3351 of 2018 with Civil Application No.2030 of 2019
Date of Decision : 29-08-2019

Acts Referred :

Maharashtra Regional and Town Planning Act, S.53
Constitution of India, Art.226

HEADNOTE

Headline: Once Municipal Corporation issued notices of demolition and held them in abeyance only because legal proceedings were pending, Petitioner could not have presumed that these notices have been withdrawn or Corporation gave up its intention to demolish construction.

Maharashtra Regional and Town Planning Act, 1966, S.53 - Unauthorized construction - Issuance of Notices of demolition and demand - Municipal Corporation in issuing such notices of demand never gave an impression to Petitioner that it will tolerate construction activity carried out or has decided to regularize it - Once Municipal Corporation issued notices of demolition and held them in abeyance only because legal proceedings were pending, Petitioner could not have presumed that these notices have been withdrawn or Corporation gave up its intention to demolish construction - Extraordinary, equitable and discretionary jurisdiction of High Court cannot be permitted to be invoked so as to subvert law or to make a mockery of rule of law - Petitioner institution filed petition with mala fide to delay demolition of unauthorized construction - Mere dismissal of petition will not have any deterrent effect - Certain cost

impose to be paid by Petitioner to Respondents in addition to costs of demolition of construction carried out which also should be borne by Petitioner. Order accordingly. (Paras 32 and 33)

Result: Order accordingly.

# # #

Cases Referred :

1. K.Ramadas Shenoy Vs. Chief officer, Town Municipal Council, Udipi;1974 AIR(SC) 2177 : 1974 DGLS(SC) 226 : 1974 (2) SCC 506 : 1976 (1) SCC(Cri) 473 :
2. Pleasant Stay Hotel: Pleasant Stay Hotel: Pleasant Stay Hotel: State of Tamil Nadu Vs. Palani Hills Conservation Council;1995 DGLS(SC) 895 : 1995 (6) JT 600 : 1995 (5) Scale 251 : 1995 (6) SCC 127 :
3. Friends Colony Development Committee Vs. State of Orissa;2005 AIR(SC) 1 : 2005 (2) Bom.C.R. 691 : 2004 DGLS(SC) 1010 : 2004 (9) JT 418 : 2004 (9) Scale 166 : 2004 (8) SCC 733 : 2004 (8) Supreme 256 :
4. Kerala State Coastal Zone Management Authority Vs. State of Kerala Maradu Municipality and Others;2019 DGLS(SC) 768 : 2019 (7) SCC 248 : 2019 (8) Scale 113 : 2019 (6) Supreme 476 :

Advocates Appeared :

Mr. Sukand R. Kulkarni, for the petitioner.
Mr. Deendayal G. Dhanure, for Respondent No. 1.

ORAL JUDGMENT :

1. By this Writ Petition under Article 226 of the Constitution of India, the Petitioner is challenging a notice dated 9th March 2018. The circumstances which this notice has been issued would have to be set out to appreciate the challenge.

2. The notice informs the Petitioner that there is a certain property and situate within the municipal limits of the Solapur Municipal Corporation. The Solapur Municipal Corporation was constrained to address this notice for the Petitioner has made extensive unauthorised and illegal construction. The Municipal Corporation has informed the Petitioner that this construction is not only unauthorised but illegal from the inception. The reason why these two

words are frequently used in this notice are that no permission, much less any permission as contemplated by Section 44 of the Maharashtra Regional and Town Planning Act 1966 ("MRTP Act"), was ever taken. In fact, from the inception the Municipal Corporation has been directing the Petitioner to bring down this construction. A notice under Section 53 of the MRTP Act was issued way back on 17th February 2017. The response to that was also considered. The response to that was that an application within the meaning of sub-Section 3 of Section 53 with a request to permit retention of the works carried out at site.

3. Since such application has to be dealt with strictly in accordance with the parameters laid down by the very statue for grant of development permission that request was refused.

4. The Writ Petition presumes that the construction is capable of being regularised. The Petitioner presumes that because there is a non-payment of development charges of Rs. 8 crores with interest, amounting in all to about Rs. 9.50 crores approximately, that the Municipal Corporation intends to bring down or demolish this construction. If the payment is made then there is no possibility of such demolition, and that everything illegal and without permission will be condoned, accepted or 'regularised'. Then all notices to bring down this building or demolish this unauthorised and illegal construction would not survive.

5. Thus the Petitioner raises a challenge on the basis that the demand of Rs. 8 crores is not commensurate with the wrong committed at site. In other words, this should be in consonance with the alleged illegality committed in the construction activity. The contention is that there is no such nexus or connection and therefore the demand is exorbitant and illegal.

6. We do not understand this Writ Petition to be a Petition raising any challenge to the notices in relation to the construction carried out at site. The Writ Petition proceeds on the footing that there was a layout plan approved by letter dated 18th August 2009. That was for a partial development and later on a layout plan for the whole land was also approved by the 1st Respondent, the Municipal Corporation. The building permission was granted under Section 253 of the then Bombay Provincial Municipal Corporation Act vide letter dated 7th January 2010. As the building permission was granted subject to Petitioner obtaining non-agricultural permission, that permission was sought for by making an application to the competent authority. That application was received but there was no response to the same. Subsequently a layout plan for staff quarters and a school building was approved on 1st July 2011. The Petitioner thereafter submitted proposals for building permission on 7th July 2011 which were received by the 1st Respondent on the same date after payment of appropriate scrutiny fees. However the 1st Respondent did not consider this layout plan and hence the Petitioner proceeded on the footing that beyond the period specified in the provision there is no

authorisation in the law to consider that application and the permission sought vide that application is deemed to have been granted. On this understanding of such a deemed permission the construction activity was completed, and we are sorry to say, with impunity.

7. The construction activity was noticed and a letter was issued on 26th April 2012. That letter was followed by another letter of 7th May 2012. The Petitioner responded to this letter on 8th May 2012 but surprisingly the copies of these letters are not annexed. On 2nd June 2012 the 1st Respondent issued a letter pointing out certain construction of the Petitioner as unauthorised and directed the Petitioner to file a Reply. Then the Corporation invoked Section 478 of the Act by issuing notice dated 7th June 2012. The Petitioner submitted a reply to this notice on 10th October 2012 but this reply is allegedly not considered by the Corporation.

8. Thereafter the Petitioner was called upon to remove the alleged unauthorised and illegal construction. The Petitioner throughout termed this as an 'irregularity' in carrying out the construction and not an illegality. We will deal with this aspect a little later.

9. What we have noticed from the Petitioners' assertion itself is that even the sub-divisional officer to whom the application was made for conversion of the user from agricultural to non-agricultural had not permitted that but decided to impose penalty. The Petitioner then complains that after 6th August 2012 which was the last communication after more than a year on 16th August 2013 the Petitioner received a letter from the Municipal Corporation that construction put up by the Petitioner is unauthorised and that they will carry out an inspection and submit a report. The Petitioner responded to this communication.

10. The Petitioner purported to submit corrected plans through an architect.

11. However, the Petitioner claims to have paid a substantial amount towards development charges and other dues but even so the complaint is that the Municipal Corporation did not give up its stand of terming this construction as unauthorised and illegal. The Petitioner complains that no chance or opportunity was given to explain as to how the construction is otherwise permissible.

12. A Petition was brought before this Court being Writ Petition No. 11476 of 2013. There an order of status quo was passed and the Petition was disposed of on 4th December 2013 so as to enable the Petitioner to obtain appropriate reliefs by approaching a competent Civil Court. The Petitioner immediately approach the Civil Court by filing a Regular Civil Suit No. 1221 of 2013 along with an application for interim reliefs.

13. On 30th January 2014 the learned Trial Judge rejected this application and as now stated by the Petitioner virtually dismissed its Suit. A Writ Petition was brought challenging that order in Writ Petition No. 3663 of 2014 but that was dismissed by this Court on 21st January 2015.

14. The Petitioner then complains that though this Court gave an opportunity to the Petitioner to make an application for regularisation and that application was pending, the Corporation agreed to approve the revised building permissions and layout plans subject to the Petitioner institution paying an amount of Rs. 8,08,14,170/- towards development charges. The Petitioner presumes this is an approval to the construction activity which from inception was unauthorised and illegal and alleges that it showed its willingness to pay Rs. 1 crore immediately. The Corporation without furnishing details of calculation issued a notice under Section 53 of the MRTP Act on 25th October 2017 but on 28th December 2017 it allegedly approved the revised building permission and layout plans on certain conditions.

15. The Petitioner was served with another notice purporting to invoke Section 53 of MRTP Act demanding Rs.9,42,09,508/- towards development charges inclusive of interest and penalty.

16. The Petitioner institution communicated that it is expecting receipt of a substantial amount from the Government of Maharashtra towards reimbursement of scholarships and as soon as that amount is received it will make the payment. However now the Municipal Corporation is threatening to demolish the construction is the complaint.

17. The Petitioner therefore thinks that the matter is fairly simple. The presumption on which this Writ Petition is filed is that if Rs.9.50 crores had been paid then the construction is taken to be regular and authorised. It is only because there is a difficulty in arranging that sum and not being able to make a lump-sum payment of that amount within the time stipulated that the Corporation visits it with the impugned notice.

18. This Writ Petition was placed before this Court on 15th March 2018 and with the above perception a Division Bench of this Court was persuaded to pass the following order:

"Not on board. Taken up on board.

2. Heard the learned senior counsel for the petitioner. He invited our attention to the documents annexed to the petition including letter dated 27th April 2017 addressed by the petitioner to second respondent-Municipal Corporation. He states that the petitioner is accepting liability to pay a sum of Rs. 8,08,14/170/- and the petitioner wants suitable installments considering the fact that the petitioner is an educational institution.

3. Thus, the petitioner is disputing only the remaining part out of sum of Rs.9,42,99,508/-.

4. Place the petition high upon board on 16th April 2018.

5. There will be ad-interim relief in terms of prayer clause (c) subject to condition that the petitioner deposits a sum of Rs.2 crore with the first respondent on or before 4th April 2018 and subject to deposit of Rs.1 crore with the first respondent on or before 13th April 2018. If the amounts are not deposited within the stipulated period, ad-interim relief shall stand vacated without further reference to the Court."

19. After that order was passed on 16th April 2018 the Petitioner could deposit only Rs. 1 crore. This Court then said that the Petitioner should deposit a further amount of Rs. 2 crores with the Corporation by Friday, 28th April 2018 and extended the ad-interim protection on that condition. On 23rd April 2018 this Court was informed that an amount of Rs. 2 crores was not deposited in terms of the order passed by this Court prior to 23rd April 2018. Therefore, the ad-interim order was vacated and this Court clarified that the Municipal Corporation can take such action as is permissible in accordance with law. The Writ Petition also was not to be heard till the requisite deposit is made.

20. On 5th July 2018 however, this Court came to be informed that out of the admitted liability of Rs. 8,08,14,170/- the Petitioner has paid only a sum of Rs.3 crores. Unless the Petitioner deposits the entire balance admitted amount the prayer for rescheduling the date already fixed would not be considered and the matter was left at that.

21. The Writ Petition then came up on 25th October 2018 and an attempt was made to seek interim order in terms of the prayers in Civil Application No. 2341 of 2018 which this Court declined. Then on 22nd July 2019, this Writ Petition was placed before a Bench presided over by one of us (S.C. Dharmadhikari, J.) and on hearing the counsel for the Petitioner and Mr. Dhanure appearing for 1st Respondent, the following order came to be passed:

"1. Heard both sides. On the petitioner's depositing a sum of Rs.40 lakhs in this court, without prejudice to the rights and contentions in this petition and which amount shall be brought within a period of one week from today, we pass the following order:-

"(i) The subsequent action of the Municipal Corporation of the City of Solapur shall remain in abeyance. This action is taken by a communication dated 11th July, 2019, in the sense that the request of the petitioner is to remove the seal on the administrative block of their premises as

also the seizure of 17 buses, which buses belong to the petitioner's school. This subsequent action now will not enable the respondents to retain the buses or to continue with the seal, but this relief will be granted to the petitioner effective from the date the amount is deposited in this court."

2. We place this matter for admission on 5th August, 2019. In the meanwhile, the petitioner is at liberty to move a civil application so as to amend the writ petition. Granting the liberty to move the civil application and placing the petition after two weeks, we have passed the above ad-interim order. This order will also be without prejudice to the rights and contentions of the Municipal Corporation of the City of Solapur.

3. The reply affidavit tendered by Mr. Dhanure is taken on record."

22. Now this order must be understood in the back drop of the essential grievance projected on that date. The grievance projected was that instead of pursuing its notice of 9th March 2018, the Municipal Corporation charted a course unknown to law. It seized and attached seventeen school buses belonging to the Petitioner and also sealed the administrative block of the premises in which the Petitioner houses its school/educational institution. That is found prima facie to be not within the scheme of the enactment invoked and particularly its provision. Therefore with a conditional protection to that extent relief was granted.

23. When this matter was placed earlier and particularly on 5th August 2019 we insisted on an Affidavit in Reply being filed by the Municipal Corporation. That Affidavit in Reply is now filed and the Affidavit of the Municipal Corporation clarifies the position. The Affidavit brings to our notice all the developments till date. The Affidavit of 20th July 2019 page 47 onwards though on our file was not noticed on the previous date of hearing because of the other issue projected namely seizure of buses and sealing of the administrative block. However now we carefully perused it with its annexures. Pertinently the Petitioner had not only filed a Civil Suit but tried to obtain an interim injunction therein so as to restrain the Municipal Corporation from pursuing and going ahead with its notices. The Trial Court dismissed the injunction application on 30th January 2014, and on 10th March 2014 even the Appellate Court refused to interfere with that order of the Trial Court. A writ petition against that appellate order failed on 25th January 2015. Thus the Trial Court order dated 30th January 2014, the District Court's order dated 10th March 2014 and this Court's order of 25th January 2015 to our mind conclude the issue. The issue was whether the Municipal Corporation could have proceeded to issue notices threatening demolition of the construction. The Trial Court has indeed observed that the Petitioner sought to make light of the whole matter. It projected as if it has only failed to obtain one non-agricultural user permission and if that had been brought possibly the construction is

capable of being tolerated or regularised. The Trial Court observed that this was not the only condition and there were other conditions which were extremely vital and crucial. No bifurcation or segregation of conditions was permissible in the given facts and circumstances. Any conditional permission therefore demanded complete compliance of all terms and not only some of them. On such a conclusion, the Trial Court in a detailed order dismissed the application for interim injunction. The notices are thus legal and valid. The challenge to the Trial Court's order has failed. Once that challenge has failed, and even this Court did not entertain the Petitioners in the first round (and later in a review), then, the Municipal Corporation could not have communicated to the Petitioner that it was willing to consider the regularisation of the construction of structures and buildings. All that the Municipal Corporation did was to calculate an amount payable towards development charges, interest and penalty and sought to recover this levy by the further communications. To our mind, the Municipal Corporation in issuing such notices of demand never gave an impression to the Petitioner that it will tolerate the construction activity carried out or has decided to regularise it. Once the Municipal Corporation issued the notices of demolition and held them in abeyance only because legal proceedings were pending, the Petitioner could not have presumed that these notices have been withdrawn or the Corporation gave up its intention to demolish the construction.

24. Even the Petitioner did not understand the matter in this manner as is evident from its own communication, a copy of which is at page 37 of the paper book. Thus throughout the matter must be viewed by segregating the issue of payment of development charges of which the Petitioner was in arrears and the construction activity which was expressly illegal and unauthorised.

25. It is the latter issue which is disturbing for us.

26. The Petitioner's Counsel has instructions to state that any amount over and above the sum brought in this Court would be paid or if time is granted will be paid even now but this Court should not allow the Municipal Corporation to demolish the construction. We do not think that Municipal Corporation can be allowed to withdraw or resile from its decisions merely because wrongdoers come forward and are ready and willing to pay fines and penalties or charges as demanded by the public body. If on payment of money every illegality can be cured, then, that understanding of such parties must be removed forthwith. The law does not permit this course. The law only allows retention of works carried out without a development permission provided development permission can otherwise be granted to such works. If no development permission can ever be granted then, merely because the construction and development has already been carried out there is no question of such a post facto permission or approval. The

touchstone on which an application under Section 53(3) is to be considered is only one, and that is if initially the Applicant had come and sought a development permission can that be granted, and if it could not have been granted, then, in this process or by this route, the same could not have been obtained. The Petitioner desires to obtain this by making payment and which also it has failed to do despite installments.

27. We do not see why we should entertain such a litigant and in our jurisdiction under Article 226 of the Constitution of India. This jurisdiction is not only extraordinary but equitable and discretionary as well. It will not be permitted to be invoked so as to subvert the law or to make a mockery of the rule of law. If we allow the Petitioner to retain the construction activity carried out at site or the Municipal Corporation to tolerate it we would be not only acting contrary to law but making a mockery of the rule of law. If that has to prevail then this construction and which is of such enormity as can only be crystallised from a table produced for our perusal by the Municipal Corporation, ought to go. The table shows that the total area is 47.125 Acres. The Petitioner has carried out the following construction:

g.. Building Name No of Floor Height of Build. (in meter) Built up area (in Sq.feet)

1. C Type staff quarter G+3 13.10 8685.93

2. C Type staff quarter G+3 13.10 8685.93

3. C Type staff quarter G+3 13.10 8685.93

4. C Type staff quarter G+3 13.10 8685.93

5. G+4 14.85 14314.27

6. G+3 13.10 17373.42

7. G+3 12.90 15279.58

8. Ground Floor 4.55 13579.09

9. G+3 14.75 14912.96

10. G+4 15.35 28164.84

11. G+3 15.35 28164.84

12. Ground Floor 4.05 2448.68

13. Ground Floor 4.05 2525.64

Total 1,71,497.725

28. This is the magnitude of the unauthorised and illegal construction and spread over an area of 47.12 Acres. There are 13 buildings of which eight are of ground plus three, two are of ground plus four and three single storied. The total built up area is 171497.725 sqft.

29. Once we have noticed the intent and purpose of instituting this Writ Petition is only to stall the inevitable then all the more we are disinclined to entertain this Writ Petition and to grant any reliefs in terms of the prayers thereof. The Writ Petition is dismissed.

30. Despite numerous judgments of the Hon'ble Supreme Court of India and this Court the tendency to carry out construction beyond permissible limits has not been curbed. In K. Ramadas Shenoy v. Chief Officers Town Municipal Counfilr Udipi & Ors., 1974 (2) SCC 506 the Supreme Court said:

29. The Court enforces the performance of statutory duty by public bodies as obligation to rate payers who have a legal right to demand compliance by a local authority with its duty to observe statutory rights alone. The scheme here is for the benefit of the public. There is special interest in the performance of the duty. All the residents in the area have their personal interest in the performance of the duty. The special and substantial interest of the residents in the area is injured by the illegal construction.

30. The High Court was not correct in holding that though the impeached resolution sanctioning plan for conversion of building into a cinema was in violation of the Town Planning Scheme yet it could not be disturbed because Respondent 3 is likely to have spent money. An excess of statutory power cannot be validated by acquiescence in or by the operation of an estoppel. The Court declines to interfere for the assistance of persons who seek its aid to relieve them against express statutory provision. Lord Selborne in Maddison v. Alderson [(1883) 8 AC 467] said that courts of equity would not permit the statute to be made an instrument of fraud. The impeached resolution of the Municipality has no legal foundation. The High Court was wrong in not quashing the resolution on the surmise that money might have been spent. Illegality is incurable. (Emphasis added)

31. Strict action has been taken by courts repeatedly since K. Ramadas Shenoy, whenever such illegality is encountered. See, for instance: Pleasant Stay Hotel & Anr. v. Palani Hills Conservation Council & Ors., 1995 (6) SCC 127; Friends Colony Development Committee v. State of Orissa & Ors., 2004 (8) SCC 733; and Kerala State Coastal Zone Management Authority v. State of Kerala, Maradu Municipality & Ors., 2019 (7) SCC 248.

32. Mere dismissal of such Writ Petitions will not have any deterrent effect. The wrongdoers know that at best their request, their applications, and their petitions would be dismissed. But beyond that there are no consequences to be visited on them. We want to remove and dispel this impression which is gaining ground with the wrongdoers. We think that not only the Municipal Corporation should be allowed to recover all arrears of the development charges with interest and penalty by a process known to law and inclusive of attachment and sale of immovable properties, but, additionally, we think that filing repeated litigations not only in this Court on three or four occasions but Civil Suit, appeals to District court to delay the demolitions should result in imposition of heavy costs on the Petitioner. The Petitioner has taken advantage of the sympathy shown by this Court and which the Petitioner misunderstood totally. The Petitioner projected before this Court throughout that about 3000 odd students could be affected as they are taking education in the school/educational institutions. It is their future which is at stake. This was again a desperate attempt to stall the inevitable. In these circumstances we do not think that either the interest of 3500 students, the 400 and odd employees should deter us from imposing costs. In taking a stringent view, we are fortified by the observations of the Supreme Court in Friends Colony (supra), paragraph 25. In this case, it is even more alarming that the Petitioner runs an educational institute which is completely illegal, and that it does so in the name of one of the foremost educationists in the history of this state. We do not believe that this rampant illegality in setting up the built structure can impart proper or correct values to students, nor do we for a single minute believe that the name that is invoked by the school would herself have condoned any such illegality.

33. We therefore impose costs of Rs. 1 lakh to be paid by the Petitioner to the Respondents in addition to the costs of demolition of the construction carried out which also should be borne by the Petitioner. Each of these amounts if not paid within the time stipulated by us shall be recovered as arrears of land revenue.

34. The costs that we have imposed should be paid within a period of four weeks from today. Should the Municipal Corporation raise a final demand for payment of development charges or arrears and interest and penalty thereon then within four weeks of noncompliance with that demand even that amount can be recovered by a process known to law and particularly for

recovery of arrears of land revenue. Similar would be the fate of the demand calling upon the Petitioner to pay the demolition charges. The Petitioner must bear all these charges. Unless and until the Petitioner is burdened with them we do not think that the tendency to carry out construction activities beyond the permissible limits and with impunity can ever be curbed and curtailed. Needless therefore to clarify that we have made a difference between regularising something which is merely irregular and not permitting regularisation of something which is unauthorised and illegal from inception. If the latter is the act in which the Petitioner has indulged in then no application for regularisation or retention of the works shall be entertained by the Municipal Corporation. The Writ Petition and the Civil Application are dismissed.

35. The amount which is deposited by the Petitioner in this Court shall be paid over to the Municipal Corporation with accrued interest.

36. At this stage the Petitioner's Advocate seeks a stay of this order. This request is opposed by Mr. Dhanure.

37. Having heard Counsel on this point we do not think the request as prayed can be granted particularly in view of our observations, findings and conclusions recorded hereinabove. The request is therefore refused.

Order accordingly.